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Rebecca McDowell Cook
Secretary of State

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Dec. 15, 2000	Jan. 16, 2001	Jan. 29, 2001	Feb. 28, 2001

Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule.

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RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 24, *Missouri Register*, page 27. The approved short form of citation is 24 MoReg 27.

The rules are cited in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation , i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—Cite material in the RSMo by date of legislative action. The note in parentheses gives the original and amended legislative history. The Office of the Revisor of Statutes recognizes that this practice gives users a concise legislative history.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo Supp. 1999. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the Missouri and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than 180 calendar days or 30 legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RESCISSION

7 CSR 10-8.010 General Information. This rule provided general information for implementation of Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 and Title 49 *Code of Federal Regulations* part 23.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 *Code of Federal Regulations* (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 *Code of Federal Regulations*, part 26. These new federal regulations were

adopted in order to comply with the U.S. Supreme Court's *Adarand v. Pena* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri and United States Constitutions*. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 *Code of Federal Regulations* part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rescission covering this same material is published in this issue of the *Missouri Register*.

Title 7—DEPARTMENT OF TRANSPORTATION Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RULE

7 CSR 10-8.011 Definitions

PURPOSE: This rule defines terms applicable to the Disadvantaged Business Enterprise (DBE) Program established by the Missouri Department of Transportation (MoDOT) in this Chapter, in accordance with Title 49 *Code of Federal Regulations* Part 26, Section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113, and in accordance with MoDOT's approved DBE Program submittals to the U.S. Department of Transportation (USDOT).

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 *Code of Federal Regulations*, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Pena* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and this rule must be adopted in order to bring MoDOT's DBE rules into compliance with the federal DBE Program requirements. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of the related emergency rescissions and this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri and United States Constitutions*. The commission believes this emergency rule to be fair to all interested persons and parties under the circumstances.

Emergency Rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

(1) The following words and phrases have the same meaning and definition in MoDOT's DBE Program as they have been given by USDOT in Title 49 CFR Section 26.5: "Affiliation"; "Alaska Native"; "Alaska Native Corporation" or "ANC"; "Immediate family member"; "Indian tribe"; "Joint venture"; "Native Hawaiian"; "Native Hawaiian Organization"; "Personal net worth"; "Primary industry classification"; "Principal place of business"; "Set-aside"; "Small Business Administration"; "Tribally-owned concern."

(2) The following words and phrases have the meaning and definition stated below, exclusively for the purpose of administering and regulating the DBE Program established by MoDOT in this Chapter:

(A) "CFR" means the *Code of Federal Regulations*, published by the Office of the Federal Register, National Archives and Records Administration, through the U.S. Government Printing Office, Superintendent of Documents, Washington, D.C. 20402-9328.

(B) "Commission" means the Missouri Highways and Transportation Commission, a state agency created by statute and vested with authority by Article IV, Section 29, *Missouri Constitution*.

(C) "Compliance" when used with respect to MoDOT or another USDOT recipient, means that recipient has correctly implemented the requirements of 49 CFR Part 26. When used regarding a contractor, subcontractor or supplier on a USDOT-assisted Commission contract with funding authority described in 49 CFR § 26.3 (or successor funding thereto), "compliance" means that contractor, subcontractor or supplier has correctly implemented the requirements of this chapter, the relevant DBE Program provisions of the Commission contract, and 49 CFR Part 26.

(D) "Contract" means a legally binding relationship obligating a seller (including but not limited to a contractor, subcontractor or supplier) to furnish supplies or services (including but not limited to construction and professional services) and the buyer to pay for them. For the purposes of this chapter, either a lease or a sub-contract is considered to be a contract.

(E) "Contractor" means a person or firm which receives a contract directly from the Commission or another USDOT recipient in a USDOT-assisted highway, transit or airport program, to perform construction (of all types including maintenance and repair) work, project design, design-build, or other professional services.

(F) "CSR" means the *Code of State Regulations* for the State of Missouri, published by the Secretary of State of Missouri.

(G) "DBE" means a disadvantaged business enterprise.

(H) "Department" means the Missouri Department of Transportation or "MoDOT", a constitutional state department answerable and subordinate to the Commission within the Executive Branch of Missouri government, which entity is also described in Missouri law as the Missouri Highways and Transportation Department; unless the context and usage of the term clearly indicates that it is referring to the United States Department of Transportation or "USDOT".

(I) "Disadvantaged business enterprise" means a for-profit small business concern—

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation or other business entity, in which 51 percent of the stock or shares are owned by one or more socially and economically disadvantaged individuals; and

2. Whose management and daily business operations are controlled by one or more of those socially and economically disadvantaged individuals who own it.

(J) "FAA" means the Federal Aviation Administration within USDOT, including its Administrator and his or her designees.

(K) "FHWA" means the Federal Highway Administration within USDOT, including its Administrator and his or her designees.

(L) "FTA" means the Federal Transit Administration within USDOT, including its Administrator and his or her designees.

(M) "MoDOT" means the Missouri Department of Transportation, which is also described in Missouri law as the Missouri Highways and Transportation Department.

(N) "Noncompliance" when used with respect to MoDOT or another USDOT recipient, means that recipient has not correctly implemented the requirements of 49 CFR Part 26. When used regarding a contractor, subcontractor or supplier on a USDOT-assisted Commission contract with funding authority described in 49 CFR § 26.3 (or successor funding thereto), "compliance" means that contractor, subcontractor or supplier has not correctly implemented either the requirements of this chapter, or the relevant DBE Program provisions of the Commission contract, or 49 CFR Part 26, or a combination of those legal requirements.

(O) "Race- and gender-conscious" measure or program is one that is focused specifically on assisting only businesses owned and controlled by members of certain racial groups and/or the feminine gender, such as businesses which qualify for DBE program certification under USDOT's definition of a "socially and economically disadvantaged individual" at 49 CFR § 26.5, using a rebuttable presumption to classify persons as "disadvantaged" or not based upon their race, national origin or ancestry, or female gender.

(P) "Race- and gender-neutral" measure or program is one that is, or can be, used to assist all small businesses, regardless of the race, national origin or ancestry, or gender, of the persons who own and control those businesses.

(Q) "Recipient" is any entity, public or private, to which USDOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA; or else it is an entity that has applied for such assistance. MoDOT is usually a "primary recipient" of USDOT financial assistance, but then MoDOT may pass some of that funding through to other recipients. A person or firm which is providing construction, design or other professional services, or materials, supplies or equipment, for a recipient's USDOT-assisted project as a contractor, subcontractor or supplier, is not a "recipient" for the purposes of this chapter.

(R) "Small business concern", with respect to firms seeking to participate as DBEs in USDOT-assisted contracts, means a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121), that also does not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b).

(S) "Socially and economically disadvantaged individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

1. Any individual who a recipient finds to be socially and economically disadvantaged individual on a case-by-case basis.

2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

c. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or native Hawaiians;

d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand,

Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

e. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

f. "Women;

g. Any additional groups whose members are designated as socially and economically disadvantaged by the U.S. Small Business Administration (SBA), at such time as the SBA designation becomes effective.

3. Provided, however, that no individual can qualify as "economically disadvantaged" or be considered "socially and economically disadvantaged" if his or her personal net worth (computed as directed under 49 CFR Part 26 and its Appendix E) exceeds the maximum amount specified in 49 CFR § 26.67(b) and (d), as that amount may be adjusted by USDOT.

(T) "Subcontractor" means a person or firm which does not receive a contract directly from the Commission or another USDOT recipient in a USDOT-assisted highway, transit or airport program, but instead contracts with a contractor or subcontractor in that program, to perform construction (of any type including maintenance and repair) work, project design, design-build, or other professional services, to help complete a USDOT-assisted highway, transit or airport project.

(U) "Supplier" means a person or firm which provides exclusively materials, supplies or equipment, but not construction, design, or other professional services, by contract with the Commission or another USDOT recipient, or with a contractor or a subcontractor.

(V) "TEA-21" means the federal Transportation Equity Act for the 21st Century, Public Law 105-178, 112 Stat. 107 et seq., and any of its sections or provisions.

(W) "USDOT" refers to the U.S. Department of Transportation, including the Secretary of Transportation, the Office of the Secretary, the FHWA, the FTA and the FAA, or any one of these administrative units of the U.S. Department of Transportation.

(X) "USDOT-assisted contract" means any contract between the Commission (or other USDOT recipient) and a contractor or supplier funded in whole or in part with USDOT financial assistance. This term also includes lower tier contracts between the contractor and a subcontractor or a supplier, or between a subcontractor and a supplier, for any services or supplies needed to perform the contract work which is being funded in whole or in part with USDOT financial assistance.

(3) Throughout this chapter, the term "firm" shall be used to refer to any private legal person or business entity which may lawfully exist under the laws of Missouri or its state of creation, and which may contract to perform any services, or to provide or sell any materials or supplies. The term "firm" shall be deemed to include (but not be limited to) an individual, corporation, partnership, limited partnership, joint venture, limited liability company, or a professional corporation. However, the term "firm" shall not include any "not for profit" corporation or other "not for profit" entity, and shall not include any public governmental entity. Furthermore, the firm and any fictitious name used by the firm must, to the extent required by Missouri law, be properly registered to do business in Missouri with the Missouri Secretary of State and the Missouri Department of Revenue, before that firm may perform work or sell materials or supplies in Missouri as a contractor, subcontractor, supplier, or any DBE firm recognized by MoDOT.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations Part 26; Section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rule covering this same material is published in this issue of the Missouri Register.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RESCISSION

7 CSR 10-8.020 Definitions. This rule defined terms applicable to the Disadvantaged Business Enterprise Program.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

*EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri and United States Constitutions*. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.*

AUTHORITY: sections 226.020 and 226.150, RSMo 1994, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30 1994. Emergency amendment filed Feb. 15, 1996, effective Feb. 25, 1996, expired Aug. 22, 1996. Amended: Filed Feb. 15, 1996, effective Aug. 30, 1996. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rescission covering this same material is published in this issue of the Missouri Register.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program

EMERGENCY RULE

7 CSR 10-8.021 General Information

PURPOSE: This rule provides general information regarding MoDOT's implementation of the DBE Program requirements of Title 49 Code of Federal Regulations Part 26 in USDOT-assisted programs and contracts.

PUBLISHER'S NOTE: The publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the full text of that material will be made available to any interested person at both the Office of the Secretary of State and the office of the adopting agency, pursuant to section 536.031.4, RSMo. Such material will be provided at the cost established by state law.

*EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and this rule must be adopted in order to bring MoDOT's DBE rules into compliance with the federal DBE Program requirements. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of the related emergency rescissions and this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The commission believes this emergency rule to be fair to all interested persons and parties under the circumstances. Emergency Rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.*

(1) USDOT—Required DBE Program. The Missouri Highways and Transportation Commission, through MoDOT, has been and is the recipient of federal-aid highway funds, federal transit funds, and airport funds, as described in 49 CFR § 26.3. Some of these funds the Commission, through MoDOT, expends directly by awarding a contract for design, construction or other professional services, or supplies, to a contractor or supplier. Some of these federal funds the Commission, through MoDOT, transfers to other recipients, for them to expend through appropriate contracts. In accordance with 49 CFR § 26.3 and the provisions of various federal laws such as TEA-21 which it implements and enforces, the provisions of Title 49 CFR Part 26 are applicable to the Commission, MoDOT, and all other recipients of USDOT financial assistance through MoDOT; as well as to the contractors, subcontractors and suppliers which receive USDOT-assisted contracts from the Commission and all other recipients of USDOT financial assistance through MoDOT, from the funding sources described in 49 CFR § 26.3 (or their successor sources). The Commission, MoDOT, all other recipients of such funds through MoDOT, and their contractors, subcontractors and suppliers on USDOT-assisted contracts, are bound by the provisions of Title 49 CFR Part 26; and they are also bound by the Commission's DBE Program regula-

tions in this Chapter. Some recipients of USDOT funding through MoDOT, including those described in 49 CFR § 26.21, may be required by such federal regulations to have their own DBE Program. Those recipients of USDOT funding through MoDOT are required to comply with the applicable provisions of this Chapter, and to develop other portions of their own DBE program in cooperation with and under the supervision of the USDOT.

(2) MoDOT's DBE Program Policy Statement. MoDOT has developed and filed with USDOT its signed and dated "Policy Statement" pursuant to 49 CFR § 26.23, stating MoDOT's commitment to the DBE Program, as follows:

"The Missouri Department of Transportation (MoDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. MoDOT has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, MoDOT has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy and commitment of MoDOT that disadvantaged businesses, as defined in 49 CFR Part 26, shall have a level playing field to participate in the performance of contracts financed in whole or part with federal funds. It is also the policy of MoDOT to:

- A. Ensure nondiscrimination in the award and administration of USDOT assisted contracts;
- B. Create a level playing field on which DBE firms can compete fairly for USDOT assisted contracts;
- C. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- D. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE firms;
- E. Assist in the removal of barriers to the participation of DBE firms in USDOT assisted contracts; and
- F. Assist in the development of firms to enhance the ability to compete successfully in the market place outside the DBE Program.

The External Civil Rights Administrator has been designated as the DBE Liaison Officer. In that capacity, the administrator is responsible for the implementation of all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the MoDOT in its financial assistance agreements with the USDOT.

MoDOT will advise each contractor, through contract specifications, that failure to carry out these requirements shall constitute a breach of contract and may result in termination of the contract, or any such remedy that MoDOT deems appropriate. MoDOT will require all employees and agents to adhere to the provisions of 49 CFR Part 26.

MoDOT shall annually submit to the Federal Highway Administration (FHWA) overall goals for the participation of DBE firms for a one year period of time. The goal shall be analyzed, and adjusted if necessary, at the end of each federal fiscal year.

/s/ Henry Hungerbeeler, Director Dated September 30, 1999

(3) DBE Program Applicable Only to USDOT-Assisted Contract Work. In accordance with 49 CFR § 26.3(d) and other provisions of federal law, the USDOT DBE Program at 49 CFR Part 26, and the Commission's DBE Program regulations in this Chapter, only apply to USDOT-assisted contracts awarded by USDOT funding

recipients. If the Commission or a recipient is bidding or awarding a contract which involves no USDOT funding, and which will be paid or financed entirely with state or local funding, or other federal funding not covered by DBE Program requirements, then 49 CFR Part 26 and the Commission's DBE Program regulations in this Chapter do not apply to such contract work. Although the Commission and MoDOT are implementing race- and gender-neutral measures and programs to assist small businesses as they are able to, the Commission and MoDOT have no DBE Program applicable to contract work which is entirely state-funded or state and local-funded, and the provisions of this Chapter do not apply to such state-funded or state and local-funded contract work. Any Commission "Request for Bid" will clearly indicate whether an included project is a federal project or not, and if so, it will contain information on the DBE contract goal, if any. Any recipient of USDOT funding specified in 49 CFR § 26.3 through MoDOT must provide the same information in its bidding documents.

(4) The Administration of the Commission's DBE Program. The Missouri Highways and Transportation Commission has adopted these DBE Program regulations for MoDOT, which executive branch department of state government is subordinate to and controlled by the Commission through the Commission's appointee, the MoDOT Director, who is MoDOT's Chief Executive Officer. The administration of the DBE Program within MoDOT has been assigned to the External Civil Rights Administrator, who has been designated as MoDOT's DBE Liaison Officer in compliance with 49 CFR § 26.25. The External Civil Rights Administrator supervises the External Civil Rights Unit, and reports directly to MoDOT's Inspector General, who is in turn, supervised by the MoDOT Director. However, the External Civil Rights Administrator retains direct and independent access to MoDOT's Director, Chief Engineer, and all other members of the Director's staff, concerning all DBE Program matters. As the DBE Liaison Officer, MoDOT's External Civil Rights Administrator develops, manages, and administers the DBE Program, including defining processes, procedures, and operational policies, and is responsible for implementing all aspects of MoDOT's DBE Program. The External Civil Rights Administrator directs and controls the staff of the External Civil Rights Unit, and receives assistance as necessary from the Inspector General, other MoDOT staff and Commission legal counsel, and occasionally from Commission-retained consultants and contractors, so that MoDOT has adequate staff to administer this DBE Program in compliance with 49 CFR Part 26. The External Civil Rights Administrator works closely with the Commission's Chief Counsel's Office to review DBE policies and contract provisions periodically, to ensure that they conform to state and federal law; and reviews program administration issues with the Commission attorneys assigned DBE Program responsibilities.

(5) Duties of the External Civil Rights Administrator. The External Civil Rights Administrator performs the following duties and responsibilities, either directly and personally, or through the staff of the External Civil Rights Unit:

(A) Setting and approving DBE contract goals on federal aid construction projects, including projects administered by local public agencies, aviation and transit authorities, or any other recipient receiving USDOT assistance through MoDOT.

(B) Monitoring the DBE contract goals to verify contractor compliance at the time of the bid, when the contract is awarded, during project construction, and at the time of project acceptance.

(C) With the assistance of MoDOT field staff plus other contractors and subcontractors, monitoring DBE performance to determine that the DBE firm has performed a commercially useful function, and has otherwise complied with the requirements of 49 CFR Part 26 in that contract work.

(D) Overseeing all support services provided to certified DBEs by MoDOT.

(E) Gathering and reporting statistical data and other information as required by USDOT.

(F) Reviewing third party contracts and purchase requisitions for DBE Program compliance.

(G) Working with MoDOT management, business units and staff to set the annual DBE Program goal, as well as individual project or contract goals.

(H) Ensuring that bid notices and bidding documents are made available to DBE firms in a timely manner.

(I) Identifying USDOT-assisted contracts and procurement, to include DBE contract goals (factoring in both race- and gender-neutral contracting methods as well as contract goals preferential to DBE firms) in bid solicitations, and monitoring the results of those bids.

(J) Analyzing MoDOT's progress toward annual DBE Program goal attainment, and identifying various race- and gender-neutral or other ways to achieve the annual DBE Program goal.

(K) Participating in pre-bid meetings.

(L) Advising the Commission and MoDOT's Director on DBE Program matters and the achievement of MoDOT and USDOT program requirements.

(M) Providing DBE firms with information and assistance in preparing bids, and obtaining bonding and insurance.

(N) Planning and participating in DBE training seminars.

(O) Providing outreach to DBEs and community organizations to advise of training, contracting and other business opportunities available.

(P) Maintaining the MoDOT DBE Directory, its addenda and updates.

(Q) Performing any other functions and duties necessary or appropriate to administer and enforce the provisions of 49 CFR Part 26 and this Chapter in Missouri.

(6) Contacting MoDOT's DBE Liaison Officer. MoDOT's External Civil Rights Administrator is MoDOT's DBE Liaison Officer. MoDOT's DBE Liaison Officer may be contacted in writing or by telephone as follows:

External Civil Rights Administrator
Missouri Department of Transportation
105 West Capitol Avenue, P.O. Box 270
Jefferson City, Missouri 65102-0270

Fax Number: (573) 526-5640

Telephone Number: 1-888-ASK MODOT (1-888-275-6636)

E-Mail: taeges@mail.modot.state.mo.us

(7) DBE Directory. MoDOT publishes a directory annually, with monthly updates, identifying certified DBE firms willing to perform as subcontractors on MoDOT's USDOT-assisted projects. Copies of the directory are mailed annually to all contractors authorized to do business with MoDOT, DBE firms, DBE organizations, contractor organizations, local public agencies, MoDOT district offices, and any other entity requesting copies. Monthly addenda (showing DBE firm additions and deletions, and other certification changes) are mailed to all firms and entities receiving notices of bid openings, and to plan holders, DBE firms, DBE organizations, contractor organizations, local public agencies, MoDOT district offices, and any other entity requesting copies. The firms contained in the DBE Directory and its addenda are certified as meeting the certification eligibility requirements of 49 CFR Part 26 and this Chapter, unless the addenda specifically lists the firm as not certified any longer. The directory contains each DBE firm name, address, phone, fax, socially and economically disadvantaged owner's name, the work categories in which the

firm may perform DBE certified contract work, and the geographic work area in Missouri preferred by the DBE firm. MoDOT has made the DBE Directory available electronically to all MoDOT district offices, and to the public on the internet. Paper copies of the DBE Directory are available by contacting MoDOT's DBE Liaison Officer or staff members in writing or by telephone as follows:

External Civil Rights Administrator
Missouri Department of Transportation
105 West Capitol Avenue, P.O. Box 270
Jefferson City, Missouri 65102-0270

Fax Number: (573) 526-5640
Telephone Number: 1-888-ASK MODOT (1-888-275-6636)
E-Mail: temmek@mail.modot.state.mo.us

(8) MoDOT's Non-Discrimination Policy. MoDOT will not exclude any person from participating in, deny any person the benefits of, or otherwise discriminate against any person in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. Further, MoDOT will not, directly or through contractual or other arrangements, use criteria or methods that have the effect of defeating or substantially impairing accomplishment of the objectives of the USDOT or MoDOT DBE Program with respect to individuals of a particular race, color, sex, or national origin, in MoDOT's administration of the DBE Program. The Commission and MoDOT are bound by, and agree to comply with, all requirements of USDOT's 49 CFR Part 26, the provisions of which are incorporated into this rule.

(9) DBE Program Duration and Updates. MoDOT will continue to carry out the DBE program until all funds from the USDOT financial assistance have been expended, or Congress has terminated the DBE Program. MoDOT will provide USDOT with updates and revised program submissions representing any significant changes in the MoDOT DBE Program.

(10) No Quotas or Set-Asides. MoDOT does not use quotas or set-asides in any way in the administration of the DBE program.

(11) Measures Taken in Anticipation of a Unified Certification Process.

(A) In anticipation of the Unified Certification Process (UCP) and its inherent cooperative program administration, as required by USDOT at 49 CFR § 26.81, MoDOT has submitted to USDOT one DBE Program which incorporates all modes and agencies within the USDOT, including the FTA and FAA programs. The MoDOT External Civil Rights Unit and its Administrator will work closely with the FTA and FAA program administrators to develop uniform certification and reporting processes.

(B) The External Civil Rights Unit is responsible for the administration of the DBE program for all USDOT agency requirements. This DBE Program administration includes goal setting for concurrence, participation, verification, and DBE certification.

(C) Any recipients of USDOT funding through the Commission and MoDOT will be required to comply with MoDOT's DBE program, unless they have a USDOT-approved program of their own. The requisite MoDOT DBE Program compliance includes, but is not limited to, observing all provisions of this Chapter and MoDOT's approved DBE Program which govern MoDOT's recipients of USDOT funding; and inserting the necessary provisions in their contracts to assure that their contractors, subcontractors and suppliers comply with the applicable provisions of this Chapter and MoDOT's approved DBE Program. Once a statewide UCP is defined, all recipients will be required to accept only those firms

certified under the UCP agreement. All Block Grant recipients will continue to be required to comply with leasing goals established by the sponsoring agency.

(12) Financial Institutions Owned and Controlled by Socially and Economically Disadvantaged Persons. MoDOT will identify and determine the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged persons in Missouri. MoDOT will make reasonable efforts to use the services of these institutions, within the scope permitted by state law. MoDOT will encourage prime contractors and other firms to use the services of those financial institutions which are owned and controlled by socially and economically disadvantaged persons.

(13) Required Contract Clauses in USDOT-Assisted Contracts and Subcontracts.

(A) Pursuant to 49 CFR §26.13(a), each financial assistance agreement the Commission or MoDOT signs with a USDOT operating administration, or with another primary recipient of USDOT funding subject to 49 CFR Part 26, shall contain the following assurance, in which "DOT" and "the Department" refer to USDOT: "The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award or performance of any DOT-assisted contract, or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*)."

(B) As mandated by 49 CFR § 26.13(b), MoDOT will require the following assurance to be included in every USDOT-assisted contract which MoDOT or the Commission signs with a contractor, and each subcontract that prime contractor signs with a subcontractor; where "DOT" refers to USDOT and "the recipient" means MoDOT and the Commission: "The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out all applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."

(14) Overconcentration of DBE Firms. USDOT rule 49 CFR §26.33(a) provides that if MoDOT determines that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, MoDOT must devise appropriate measures to address that overconcentration. MoDOT has not identified any types of work in which DBE firms are so overconcentrated. MoDOT will continue to monitor DBE firm participation and usage, and will take appropriate action to address any identified DBE firm overconcentration in a certain type of work.

(15) Mentor-Protégé Program. USDOT rule 49 CFR § 26.35 discusses mentor-protégé programs in the context of the DBE

Program. MoDOT will not be participating in a mentor-protégé program at this time.

(16) Program Violations, or False or Fraudulent Claims or Conduct. MoDOT will notify USDOT of any program violations, or suspected false, fraudulent or dishonest conduct, in connection with the DBE Program, in order for USDOT (and/or the U.S. Department of Justice) to take any of the compliance procedures, enforcement actions or sanctions provided in 49 CFR Part 26, Subpart F. These procedures, actions or sanctions include, but are not limited to: suspension or termination of federal funding; refusal to approve projects, grants or contracts until deficiencies are remedied; U.S. government-wide suspension or debarment proceedings under 49 CFR Part 29; available Program Fraud and Civil Remedies provided for in 49 CFR Part 31; or criminal prosecution under 18 U.S.C. § 1001 or other applicable provisions of law. MoDOT will also consider initiating compliance procedures, enforcement actions or sanctions available under Missouri civil, criminal, contract law, or in equity. The Commission and MoDOT will consider whether the conduct at issue affects the determination of that entity's responsibility as a contractor, and thus, the entity's eligibility to receive future Commission contracts.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; Section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rule covering this same material is published in this issue of the Missouri Register.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RESCISSION

7 CSR 10-8.030 Procedures for Certifying Disadvantaged Business Enterprises. This rule set forth the procedures for certifying disadvantaged business enterprises.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

*EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway*

funding creates an immediate danger to the public health, safety and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rescission covering this same material is published in this issue of the Missouri Register.

Title 7—DEPARTMENT OF TRANSPORTATION Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RULE

7 CSR 10-8.031 Who is Governed and Bound By the USDOT and MoDOT DBE Program Regulations

PURPOSE: This regulation describes which individuals, entities and firms are governed and bound by the DBE Program regulations in this Chapter, the USDOT DBE Program regulations at 49 CFR Part 26, and the USDOT-approved MoDOT DBE Program submissions.

PUBLISHER'S NOTE: The publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the full text of that material will be made available to any interested person at both the the Office of the Secretary of State and the office of the adopting agency, pursuant to section 536.031.4 RSMo. Such material will be provided at the cost established by state law.

*EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and this rule must be adopted in order to bring MoDOT's DBE rules into compliance with the federal DBE Program requirements. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of the related emergency rescissions and this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The commission believes this emergency rule to be fair to all interested persons and parties under the circumstances. Emergency Rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.*

(1) USDOT DBE Regulations Incorporated Into these Rules. The USDOT DBE Program rules at 49 CFR Part 26 are adopted by the Commission, and incorporated into these MoDOT DBE Program rules. To the extent that any individual, entity or firm is governed by the DBE Program regulations in this Chapter, that individual, entity or firm is also governed and bound by the corresponding USDOT DBE Program regulations at 49 CFR Part 26.

(2) MoDOT DBE Program Submissions to USDOT. As required by 49 CFR § 26.21, MoDOT must have a DBE Program which USDOT has approved, and MoDOT and the Commission must comply with it. Whenever MoDOT and the Commission submit proposed significant changes in the MoDOT DBE Program to USDOT for approval, the Commission will publish the contemplated significant changes in the *Missouri Register* as proposed rulemaking, or proposed amendments. If and when USDOT approves the proposed changes in MoDOT's DBE program, the Commission will immediately adopt an order or emergency order of rulemaking accordingly, so that the published rules in this Chapter of the *Code of State Regulations* are consistent with the MoDOT DBE Program as it is then approved by USDOT.

(3) The following individuals, entities and firms are governed and bound by the DBE Program regulations in this Chapter, and the related and pertinent USDOT DBE Program regulations at 49 CFR Part 26:

(A) Any individual or firm with an ownership interest in a firm which is DBE certified, or which desires to be DBE certified, as well as that firm and its officers, management, employees, agents and representatives. They are bound when they or the firm apply for DBE certification, while they are certified, and when they participate in any USDOT-assisted program or contract work which is subject to 49 CFR Part 26; and for at least three years thereafter.

(B) Any individual, entity or firm which is a recipient through the Commission and MoDOT of USDOT funding subject to 49 CFR Part 26, including their owners, officers or officials, employees, agents and representatives. They are bound when the individual, entity or firm applies for status as a recipient of USDOT funding subject to 49 CFR Part 26; while that funding exists and is available for expenditure; and for at least three years thereafter.

(C) Any individual, entity or firm which is a contractor, subcontractor or supplier on a USDOT-assisted contract issued by MoDOT or any other recipient funded through MoDOT, if that USDOT funding is subject to 49 CFR Part 26; including their owners, officers or officials, management, employees, agents and representatives. They are bound when as a contractor, subcontractor or supplier, they submit a bid for the USDOT-assisted contract, or when they submit a bid or quote which is considered for or used in a bid for that USDOT-assisted contract; they remain bound while they perform as a contractor, subcontractor or supplier on such USDOT-assisted contract work; and for at least three years after that work is completed and accepted, and final payment thereon has been made.

(D) Each member of the Commission, the MoDOT Director and Chief Engineer, the MoDOT External Civil Rights Administrator, and all other MoDOT or Commission officers, officials, employees, agents and representatives. They are bound while they hold that position, and indefinitely thereafter for those DBE Program duties and responsibilities of a continuing nature after they have left those positions or employment with the Commission or MoDOT.

(E) The USDOT and its operating administrations (FHWA, FAA and FTA), plus its agency administrators, officers, officials, employees, agents and representatives are bound in accordance with 49 CFR § 26.21(b)(1), but only to the extent that the USDOT or one of its operating administrations has approved or will

approve the MoDOT DBE Program submissions and updates which correspond to the provisions of these regulations.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rule covering this same material is published in this issue of the Missouri Register.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RESCISSION

7 CSR 10-8.040 Procedures for Certification Renewal of Disadvantaged Business Enterprises. This rule set forth the procedures for certification renewal of disadvantaged business enterprises.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

*EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri and United States Constitutions*. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.*

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rescission covering this same material is published in this issue of the Missouri Register.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program

EMERGENCY RULE

7 CSR 10-8.041 Effective Date of the DBE Program Under 49 CFR Part 26

PURPOSE: To describe, under federal and state law, when the different components of the USDOT and MoDOT DBE Program became effective in Missouri.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and this rule must be adopted in order to bring MoDOT's DBE rules into compliance with the federal DBE Program requirements. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of the related emergency rescissions and this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri* and *United States Constitutions*. The commission believes this emergency rule to be fair to all interested persons and parties under the circumstances. Emergency Rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

(1) Effective Date of 49 CFR Part 26. USDOT's new DBE regulations at 49 CFR Part 26 became effective and replaced USDOT's former DBE regulations (previously located at 49 CFR Part 23) on March 4, 1999. See 49 CFR § 26.9(a), and see USDOT's final rulemaking with comments at 64 *Federal Register* 5096-5148, at page 5096. USDOT has determined and advised all recipients such as MoDOT that since Part 26 is now in effect, recipients are responsible for implementing it, and they may no longer implement the former Part 23. Therefore, under federal law, 49 CFR Part 26 became effective and began governing the DBE Program on March 4, 1999; and MoDOT has been obligated to observe and enforce its provisions from and after that date as a matter of federal law.

(2) USDOT Binding Written Interpretations and Guidance. Since the publication of 49 CFR Part 26, USDOT has been periodically issuing valid and binding written interpretations and guidance concerning 49 CFR Part 26. As MoDOT's External Civil Rights Unit has received or continues to receive these, MoDOT has been observing and enforcing their DBE Program guidance, and MoDOT will continue to do so, as a matter of federal law. These valid and binding written guidance are available from USDOT and its Office of Small and Disadvantaged Business Utilization on the internet at their website for the DBE Program: <http://osdbuweb.dot.gov/programs/dbe/dbe.html>; or on the main USDOT website (www.dot.gov) in the Office of Small and Disadvantaged Business portion of the site. Also, you may write or phone the Office of Civil Rights for FHWA, FTA or FAA; or contact the FHWA, FTA, or FAA field offices serving Missouri.

(3) Effective Date of the Commission's Revised DBE Regulations. The Commission and MoDOT understand that these revised state DBE Program regulations will take effect on a date later than March 4, 1999 under state law. Therefore, these regulations will not be relied upon for actions taking place prior to their legally-effective date; but the USDOT regulations at 49 CFR Part 26 will apply to govern MoDOT's DBE Program from and after March 4, 1999, as required by federal law and Section 226.150 RSMo.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rule covering this same material is published in this issue of the *Missouri Register*.

Title 7—DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program

EMERGENCY RESCISSION

7 CSR 10-8.050 Challenge Procedures for Disadvantaged Business Enterprises. This rule set forth the challenge procedures for disadvantaged business enterprises.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri* and *United States Constitutions*. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A

proposed rescission covering this same material is published in this issue of the Missouri Register.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

EMERGENCY RULE

7 CSR 10-8.051 Procedures and Policies for Initially Certifying and Recertifying Disadvantaged Business Enterprise Firms

PURPOSE: This rule describes the procedures and policies which MoDOT will use to certify firms as DBEs under federal law.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's Adarand v. Pena opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and this rule must be adopted in order to bring MoDOT's DBE rules into compliance with the federal DBE Program requirements. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of the related emergency rescissions and this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The commission believes this emergency rule to be Fair to all interested persons and parties under the circumstances. Emergency Rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

(1) The Certification Application and Review Process.

(A) All applicants for DBE certification by or through MoDOT shall be furnished an application form in one or more parts, written instructions for completing the application, a copy of the rules in this Chapter, and a copy of the eligibility requirements of Title 49 CFR Part 26. Through this application process, each firm seeking DBE certification has the burden of demonstrating to MoDOT by a preponderance of the evidence, that it meets the requirements of 49 CFR Part 26, Subpart D, concerning group membership or individual social and economic disadvantage, business size, ownership and control. As a part of this application process, each applicant must:

1. Provide information showing that the individuals who own and control the applicant firm are members of one or more groups identified in 49 CFR § 26.67(a) that are rebuttably presumed to be socially and economically disadvantaged. Each applicant firm, through one or more of the individuals owning and controlling that firm, must submit one or more signed, notarized "statement of disadvantage" certification(s) on a form provided by MoDOT, certifying under oath that each owner listed in the application as presumptively disadvantaged is, in fact, socially and economically disadvantaged. If MoDOT has no reason to question these sworn certifications, then MoDOT will rebuttably presume that each such owner is actually socially and economically disadvantaged. If MoDOT has any reason to question whether one or more of the designated individuals is actually a member of a USDOT rebuttably-presumed socially and economically disadvantaged group, MoDOT shall require each such individual to demonstrate, by a

preponderance of the evidence, that he is a member of, and has held himself out over a long period of time as a member of, a group whose members are classified by USDOT in 49 CFR §§ 26.5 and 26.67(a) as being rebuttably presumed to be "socially and economically disadvantaged individuals".

2. Alternatively, if an applicant firm is owned and controlled by one or more individuals who are not or do not claim to be a member of a group identified in 49 CFR § 26.67(a) as socially and economically disadvantaged, then as part of the application, each such individual must submit an alternative signed and notarized "statement of disadvantage" bearing the same certification under oath as the "statement of disadvantage" form described in subparagraph 1. above; which alternative form shows and demonstrates with supporting documentation and details of a convincing nature that such individual is in fact both socially and economically disadvantaged under the criteria specified in 49 CFR Part 26.

3. Each individual owner of an applicant firm whose ownership and control are being relied upon for DBE certification must submit a signed, notarized statement of Personal Net Worth (PNW), referencing and accompanied by appropriate supporting documentation. If an individual's PNW statement shows that the individual's personal net worth exceeds \$750,000, then any presumption of economic disadvantage of that individual is rebutted, and that individual cannot be deemed to be "economically disadvantaged" for DBE firm certification purposes.

A. If any financial statement or other information from an accountant or CPA is used in preparing or supporting the PNW statement, the supporting documentation must include the accountant's financial statement or analysis, together with all disclosures and footnotes appearing in that document, or an explanation of why that documentation would be unduly lengthy, burdensome or intrusive.

B. If any documentation prepared within the last two years valuing any of the individual owner's corporate or other business or personal property in excess of \$25,000 (except as limited in subparagraph 3.C below) exists, that documentation should be included, or else an explanation of why that documentation would be unduly lengthy, burdensome or intrusive.

C. An individual's Personal Net Worth (PNW) statement must report an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm); however, those factors will be excluded from the final computation of personal net worth. A contingent liability does not reduce an individual's net worth. The personal net worth of an individual claiming to be an Alaska Native will include assets and income from sources other than an Alaska Native Corporation and exclude any of the following which the individual receives from any Alaska Native Corporation: cash (including cash dividends on stock received from an ANC) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per annum; stock (including stock issued or distributed by an ANC as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock); and an interest in a settlement trust.

D. To calculate an individual's PNW statement, count the present value of assets attributable to the individual. For marital property held as community property or jointly (such as tenants by the entirety), normally 50% of the value of the asset is attributable to each person. However, a legal instrument valid under state law may alter this method of asset attribution between married owners. For PNW calculations, the present value of assets, including retirement savings or investment devices (such as a pension plan, IRA, 401(k) plan) do count toward calculations of an individual's personal net worth. These assets, even though generally not readily available as sources of financing for business operations, are still part of an individual's overall wealth. However, only the pre-

sent value of a retirement savings or investment device should be counted in the PNW computation; not what the individual's return from it may be at some point in the future. Also in making a PNW calculation, it is proper to deduct or subtract any interest or tax losses the individual would incur if he or she liquidated that asset (converted it into cash) today.

4. The applicant firm must certify and show that it is a "small business", within the current U.S. Small Business Administration business size standards found in 13 CFR Part 121, for the type or types of work the firm seeks to perform in USDOT-assisted contracts.

5. The applicant firm must certify and show that it (and its affiliates) has had average annual gross receipts (as that term is defined in current U.S. Small Business Administration regulations) over the firm's previous three fiscal years of \$16.6 million or less per year.

6. The applicant firm must certify and show with supporting documentation that the firm is at least fifty-one percent (51%) owned by socially and economically disadvantaged individuals. The applicant firm's ownership by these socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of the firm's arrangements. All securities that constitute actual, effective ownership of a firm must be held directly by disadvantaged persons, as described and with the exceptions provided in 49 CFR § 26.69(d). Also, the applicant firm must certify and show that the contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. All of USDOT's criteria provided in 49 CFR § 26.69 and in other approved guidance apply to govern the determination that the firm is sufficiently owned by socially and economically disadvantaged individuals for DBE Program purposes.

7. The applicant firm must certify and show with supporting documentation that the same socially and economically disadvantaged individuals who own the firm are in control of that firm; and that the applicant firm is an independent business which is viable on its own, without being dependent on its relationship with another firm or firms. The applicant firm must certify and show that its socially and economically disadvantaged owners possess the real and unrestricted power to direct or cause the direction of the management and policies of the firm, and to make day-to-day as well as long-term decisions on matters of management, policy and operations. Furthermore, the applicant firm must certify and show that its socially and economically disadvantaged owners have an overall understanding of, and managerial and technical competence and experience directly related to, the type(s) of business in which the firm is engaged, and the firm's operations. Also, to the extent that state or local law may require the persons who own and/or control a type of firm (such as an engineering design or consulting firm) to have a particular license, registration or other credential, then the same socially and economically disadvantaged individuals who own and control an applicant firm of that type must possess the required license, registration or credential. All of USDOT's criteria provided in 49 CFR § 26.71 and in other approved guidance apply to govern the determination that the firm is actually controlled by socially and economically disadvantaged individuals for DBE Program purposes.

8. The applicant firm must certify and show that it is an operational, for-profit firm, and that it is not owned or controlled by another firm, even a DBE firm, except as authorized in 49 CFR § 26.73(e), and that the firm meets all other USDOT certification eligibility criteria of 49 CFR Part 26, Subpart D.

9. Furthermore, the applicant must provide all of the information required by MoDOT in its application form and materials

(plus any subsequent requests for information or clarification) relevant to show that the applicant is eligible under 49 CFR § 26.83, as well as 49 CFR Part 26, Subpart D.

10. The application must be signed by all of the applicant firm's socially and economically disadvantaged individual owners who are in control of the firm. The application must include the sworn affidavits of those individuals before a notary public or other person authorized to administer oaths, under penalty of perjury of the laws of the United States, attesting to the accuracy, completeness and truthfulness of the information on and accompanying the application form.

(B) Each application received shall be reviewed for completeness, and the applicant firm will be notified in writing of any additional information required. The additional information requested must be received within a maximum of thirty (30) days or as specified in writing. After that period, if the additional information requested has not been received and no extension of time has been requested and granted in writing, MoDOT may deny the application for the firm's failure or refusal to provide the relevant information requested by MoDOT (or possibly requested by USDOT), in accordance with 49 CFR § 26.73(c).

(C) After all required information is received, an on-site visit to the offices of the applicant firm, and to job sites at which the firm is working in Missouri, will be scheduled as required by 49 CFR § 26.83(C)(1). Minutes of the on-site review will be made and a copy of these minutes will be given to the applicant after the close of the on-site review. MoDOT will usually not make an on-site visit of firms domiciled outside of Missouri, but will contact the state of residence of that firm (or another certifying USDOT recipient) for a copy of their on-site visit.

(D) Following the on-site review, a final review of the application and its related documentation, plus the review minutes, will be made to determine that the application is complete, and that MoDOT has no questions or issues which require further submissions or documentation.

(2) The Effect of Small and Disadvantaged Business Program Certification From or Recognized By the U.S. Small Business Administration. MoDOT does not accept a firm's Section 8(a) or Small and Disadvantaged Business (SDB) Program certification from, or as recognized by, the U.S. Small Business Administration. Each such firm having 8(a) or SDB certification must independently establish its eligibility for initial DBE Program certification by MoDOT under the procedures of section (1) above. Each such firm which was previously certified as a DBE by MoDOT under the mandates of the former (now repealed) USDOT DBE Program regulations at 49 CFR Part 23 on the basis of its 8(a) or SDB certification, must establish its right to certification independently under the standards of 49 CFR Part 26 and the provisions of this chapter, in order to be certified or re-certified as a MoDOT DBE firm after March 4, 1999.

(3) The Effect of Certification as a DBE by Another USDOT Funding Recipient. In accordance with 49 CFR § 26.83(e), MoDOT does not accept a firm's certification by another USDOT funding recipient as a basis upon which MoDOT will rely in the DBE certification process. In each instance, and regardless of the other USDOT recipients which may have previously or currently certified this firm as a DBE for the purposes of their DBE programs, MoDOT will request, accept and consider certification documentation provided by any other certifying USDOT recipient, together with the documentation required by section (1) of this rule; but MoDOT will in each instance make an independent determination of whether the applicant firm will be certified as a DBE or not.

(4) The Effect of Certification as a DBE by a Missouri Unified Certification Program. A Unified Certification Program (UCP) for

the state of Missouri, as required by 49 CFR § 26.81, is being developed but does not current exist. Once a Missouri UCP exists and has been approved by the U.S. Secretary of Transportation under 49 CFR § 26.81(a), certification as a DBE by the UCP shall be binding upon and honored by MoDOT, and that Missouri-certified DBE firm will not be obligated to separately apply for MoDOT DBE certification under this rule or chapter.

(5) **The Burdens of Proof in Certification Determinations.** As provided in 49 CFR § 26.61, any firm applying for DBE certification has the burden of demonstrating to MoDOT by a preponderance of the evidence, that the firm meets the requirements of 49 CFR Part 26, Subpart D, concerning group membership or individual disadvantage, business size, firm ownership and control of the firm. MoDOT will rebuttably presume that individuals who establish themselves to be members of any of the USDOT-designated groups identified in 49 CFR § 26.67(a) are socially and economically disadvantaged. However, such applicants still have the obligation to provide MoDOT with the information concerning their economic disadvantage as required by this chapter and by 49 CFR Part 26, Subpart D, especially at § 26.67. All other individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to MoDOT by a preponderance of the evidence that they are socially and economically disadvantaged.

(6) **Pre-Determination Informal Proceedings to Receive Evidence for DBE Certification Purposes.** MoDOT is not obligated to do so, but in the course of any DBE certification application review, if MoDOT decides that facts, circumstances, relationships or other DBE issues require clarification or explanation by this method, MoDOT may request the applicant in writing to appear before MoDOT External Civil Rights Unit personnel and a notary public, to provide verbal testimony in person, sworn under penalty of perjury, together with supporting documentation, on the outstanding questions which MoDOT requests additional information. MoDOT's written notice will specify the issues or questions which require clarification and supplementation by the applicant. MoDOT's written notice will also afford the applicant the alternative opportunity to submit written testimony by affidavit sworn under penalty of perjury, and accompanied by other documentation, on these issues or questions, in lieu of providing sworn verbal testimony before a notary public, if the applicant is confident that such a written reply will sufficiently answer MoDOT's questions and issues. The sworn verbal presentation will not be a hearing, but will be an informal question and answer session. The applicant may have legal counsel present for any reason, including to ask clarifying questions but all sworn statements made and documentation presented shall be given by the individual owners and/or representatives of the applicant firm. A verbatim transcript of any such informal verbal presentation will be prepared by MoDOT at its own cost, and one copy will be provided to the applicant firm at no charge. The information so obtained shall also be used by MoDOT in reaching its determination on DBE firm certification.

(7) **Certification Determination.** MoDOT shall make its determinations of whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage, by considering all the facts in the record, viewed as a whole. MoDOT will make its decision on the great majority of applications for DBE certification within ninety (90) days of receipt of all information required from the applicant firm under 49 CFR Part 26 and this chapter. However, if MoDOT is unable to decide a DBE certification question within that ninety (90) day period, MoDOT may extend that time period once, for up to an additional sixty (60) days, upon written notice to the

applicant firm, explaining fully and specifically the reasons for this extension. If for any reason, MoDOT fails to issue a written decision on certification within that time period (as it may have been extended once in writing), then MoDOT is deemed to have denied the DBE certification application by USDOT, and the applicant firm may appeal that constructive denial to USDOT under the provisions and authority of 49 CFR §§ 26.83(k) and 26.89.

(8) **Effect of DBE Certification.**

(A) If MoDOT determines to certify an applicant firm as a DBE, that firm shall be notified in writing by MoDOT, and MoDOT shall notify the firm of the specific category or categories of work in which the firm is DBE certified. The firm and its pertinent information, including its approved categories of DBE work shall be added to MoDOT's DBE directory immediately. The firm will remain certified for MoDOT purposes for a period of three (3) years from its date of certification. On that date, the firm's DBE certification shall lapse and be null and void, unless the firm has submitted a reasonably complete new certification application to MoDOT. Provided, however, that during the three-year certification period, each DBE firm must accurately, truthfully and completely submit the interim sworn affidavits and documentation to MoDOT required annually and/or when there is a material change in circumstances relating to that firm, as specified in 49 CFR § 26.83 and in this chapter. Also, any certified DBE firm is potentially subject to having its DBE certification removed through the procedures specified in 49 CFR § 26.87 and in this chapter.

(B) DBE certification confers no vested or permanent right or property interest which continues beyond the three-year certification period. About sixty (60) days prior to the end of its three (3) year certification period, each DBE firm will be mailed a complete packet of certification application materials to be completed and submitted for another three (3) year certification period. If the certification application materials are completed reasonably accurately and completely by the applicant DBE firm and received by MoDOT's External Civil Rights Unit staff on or before the certification expiration date, then that firm's DBE certification will not lapse on the third anniversary date after certification. While a timely new certification application is pending, the prior DBE certification shall continue until MoDOT rules on the new certification application. If a new certification application is not timely received by MoDOT on or before the third anniversary date of certification, then that firm's DBE certification shall lapse, and the firm shall no longer be DBE certified by MoDOT. Should a firm whose certification has lapsed later apply for DBE certification with MoDOT, that firm shall remain without DBE certification unless and until its new DBE application is approved by MoDOT.

(9) **Effect of MoDOT DBE Certification Denial.**

(A) If any applicant for DBE certification (whether currently certified by MoDOT or not) is denied certification by MoDOT's External Civil Rights Unit, MoDOT's External Civil Rights Unit shall notify the firm of that decision in writing by certified mail, return receipt requested. The notice shall set out the specific grounds for certification denial in Title 49 Part 26 and in this chapter, and shall specifically describe or refer to the evidence (or lack thereof) which supports that determination by MoDOT's External Civil Rights Unit.

(B) The written notice of denial shall inform the applicant firm of its discretionary right to seek MoDOT administrative review of this certification denial by an independent hearing officer who did not take part in the actions leading to the denial of certification, and who is not subject to direction or instruction from the External Civil Rights Unit, its administrator or its personnel, who did take part in those actions. The notice of denial shall inform the applicant firm that if it requests this MoDOT administrative review within fifteen (15) days of the date of the MoDOT certification denial letter, the firm will have the choice of an informal hearing

before the hearing officer, with sworn testimony; and MoDOT will maintain a verbatim record of the hearing and the record evidence. The notice shall further inform the applicant firm of its right to elect to present additional information and arguments supporting its certification to the hearing officer in writing, without going to a hearing. The notice will provide that if the applicant firm elects MoDOT administrative review by either an informal hearing or by written submissions, the applicant firm shall be afforded an opportunity to respond to the reasons stated for denial of certification, and may provide information and arguments concerning why it should be certified. In such an administrative review, the applicant firm still bears the burdens of proof specified in section (5) of this rule and in 49 CFR § 26.61. The procedures for such an informal hearing or written presentation to an independent MoDOT hearing officer are the same as those set forth in this chapter in Rule 7 CSR 10-8.091, except that the applicant for initial or renewed certification shall bear the burdens of proof, and not MoDOT. As a result of the MoDOT administrative review, the hearing officer may either affirm the initial MoDOT denial of certification, or may reverse that determination and rule that the firm shall be certified. The ruling of the hearing officer shall be by written findings of fact and conclusions of law, and shall restate or provide by enclosure all pertinent USDOT rules in 49 CFR Part 26. If the independent hearing officer ultimately affirms the denial of certification, the applicant firm shall be informed in writing of its right to appeal the certification denial to USDOT under the procedures set forth in 49 CFR § 26.89, and that USDOT regulation shall be cited in full or enclosed.

(C) The written notice of denial shall also clearly state that further administrative review by an independent MoDOT hearing officer is optional, and not mandatory, before the firm may appeal the MoDOT certification denial to USDOT. The applicant firm, if it so wishes, may bypass any further MoDOT administrative review and may appeal the certification denial within ninety (90) days of the date of that certification denial directly to USDOT under the procedures set forth in 49 CFR § 26.89, specifying the procedures for certification appeals to the U.S. Department of Transportation. A copy of 49 CFR § 26.89, and any other pertinent USDOT DBE Program regulations cited in the determination, shall be enclosed with the written notice of denial.

(D) A firm which has been denied DBE certification may not reapply for DBE certification to MoDOT for a period of at least twelve (12) months from the date of the written notice of denial. The written notice of denial shall also inform the applicant firm of that MoDOT restriction.

(E) A firm which has previously been certified, but has been denied renewed certification as a DBE firm upon reapplication to MoDOT for DBE certification, shall be removed immediately from MoDOT's DBE Directory listings. The firm, its owners, agents and employees, shall no longer represent this firm's status as an eligible MoDOT DBE firm to any other firm or person. As with any other MoDOT denial of certification, such a firm may not reapply for DBE certification to MoDOT for a period of at least twelve (12) months from the date of the written notice of denial. The written notice of denial shall also inform the applicant firm of that MoDOT restriction.

(10) The Finality of MoDOT's Determination to Deny Initial or Renewal Certification. Whether MoDOT's determination to deny DBE certification initially or on a renewal application is made by MoDOT's External Civil Rights Unit and not appealed to a MoDOT hearing officer, or the determination is made by an independent MoDOT hearing officer under this rule, that determination is final as to MoDOT, but that determination remains appealable to USDOT under the provisions of 49 CFR §§ 26.87 and 26.89, and until USDOT has resolved such an appeal, the determination is not final under 49 CFR Part 26. Therefore, for purposes of Missouri law, the MoDOT determination to deny initial or

renewal certification is not a final state administrative decision, and it is not subject to judicial review in Missouri's courts under the provisions of Chapter 536 RSMo, or 49 CFR Part 26.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rule covering this same material is published in this issue of the *Missouri Register*.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RESCISSION

7 CSR 10-8.060 Requirements to Participate in a Mentor-Protégé Agreement. This rule set forth the requirements to participate in a mentor-protégé agreement.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri* and *United States Constitutions*. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rescission covering this same material is published in this issue of the *Missouri Register*.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program

EMERGENCY RULE

7 CSR 10-8.061 Missouri Unified Certification Program

PURPOSE: To describe Missouri's Unified Certification Program (UCP) for USDOT DBE certification when that program has been established by MoDOT with other USDOT recipients in Missouri; and until then, to state that no such UCP program currently exists in Missouri.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's Adarand v. Pena opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and this rule must be adopted in order to bring MoDOT's DBE rules into compliance with the federal DBE Program requirements. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of the related emergency rescissions and this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The commission believes this emergency rule to be fair to all interested persons and parties under the circumstances. Emergency Rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

(1) Under the mandates of 49 CFR § 26.81, within several years MoDOT and all other USDOT funding recipients in Missouri must participate in a Unified Certification Program (UCP). When the UCP is established and operational, a firm will be required to apply for certification with only entity, and if that firm is certified by that one entity, the firm's DBE certification will be honored by all other USDOT funding recipients in Missouri. However, such a UCP program does not currently exist in and for Missouri.

(2) When a Missouri UCP program is established, this regulation will be amended to describe how the UCP DBE certification process applies to and governs MoDOT's DBE certification process. This regulation will also be amended to adopt any requirements necessary to conform and comply to the new state UCP program for DBE certification.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rule covering this same material is published in this issue of the Missouri Register.

Title 7—DEPARTMENT OF HIGHWAYS AND
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EMERGENCY RESCISSION

7 CSR 10-8.070 Decertification Procedures for Disadvantaged Business Enterprises. This rule set forth the decertification procedures for disadvantaged business enterprises.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's Adarand v. Pena opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rescission covering this same material is published in this issue of the Missouri Register.

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EMERGENCY RULE

7 CSR 10-8.071 DBE Program Reporting and Disclosure Requirements for Currently Certified DBE Firms

PURPOSE: This rule describes the various affidavits and other documents each currently certified DBE firm must file with MoDOT to remain certified; and the legal implications for a DBE

firm which fails to timely file the required affidavit or other documents.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and this rule must be adopted in order to bring MoDOT's DBE rules into compliance with the federal DBE Program requirements. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of the related emergency rescissions and this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri and United States Constitutions*. The commission believes this emergency rule to be fair to all interested persons and parties under the circumstances. Emergency Rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

(1) Sworn Affidavit of A Material Change in the DBE's Status or Circumstances.

(A) As required by 49 CFR § 26.83(i), each certified DBE firm must inform MoDOT in writing of any change in circumstances which affects the firm's legal ability to meet the size, disadvantaged status, ownership or control requirements of 49 CFR Part 26; or of any material change in the information provided in the firm's last DBE certification process with MoDOT. This includes, but is not limited to, changes in a firm's management or management responsibilities; changes in operational or daily control of the firm's business; changes in firm ownership; material changes in the firm's annual gross receipts; or material changes in the personal net worth of any one owner who was represented or found to be socially and economically disadvantaged. This written notice to MoDOT should be sent to MoDOT's DBE Program Liaison Officer, the External Civil Rights Administrator.

(B) The written notice must take the form of an affidavit by the firm's socially and economically disadvantaged individual owners, sworn to before a notary public or other person who is authorized by state law to administer oaths; or else it may be an unsworn declaration which clearly contains a written affirmation that it is executed by each individual signing it under penalty of perjury as provided in the laws of the United States.

(C) The DBE firm and its controlling owners must provide this written notification to MoDOT within thirty (30) days of the occurrence of the change in question, regardless of when the change in status or circumstances occurred. If the DBE firm or its owners fails to make a timely written notification to MoDOT of such a change in status or circumstances, the firm will be deemed to have failed to cooperate, and shall subject the firm to removal of eligibility as a DBE, and each of them to any one or more of the other sanctions provided in 49 CFR § 26.109(c), or elsewhere in state or federal law. An intentional failure to timely notify MoDOT of the change in status or circumstances may subject the DBE firm or its owners to federal or state criminal prosecution for fraud or other crimes, and may also result in contractual or other liability as well.

(2) Annual Sworn Affidavit.

(A) Each year, on or before the annual anniversary date of its last certification, each DBE firm must submit a sworn and notarized affidavit from each of the firm's controlling socially and economically disadvantaged owners, executed under penalty of perjury of the laws of the United States. If a notary is not available,

then the affidavit must be executed before a person who is authorized by state law to administer oaths. This affidavit must truthfully, accurately and completely affirm that there have been no changes in the firm's status or circumstances affecting its ability to meet the DBE firm size, ownership or control requirements of 49 CFR Part 26, that there have been no changes in that individual owner's status, personal net worth or other circumstances which may affect that individual's status as socially and economically disadvantaged under 49 CFR Part 26, that there have been no other material changes in any of the other information originally provided with the firm's application for DBE certification, and that the firm is still eligible for MoDOT DBE certification status; except as the firm may have previously notified or be notifying MoDOT under 49 CFR § 26.83(i) and section (1) of this rule. These affidavits must be accompanied by the most recent personal state and federal income tax returns for each socially and economically disadvantaged individual who is on record with MoDOT as owning and controlling the firm; plus the DBE firm's most recent state and federal income tax returns; and the DBE firm's most recent financial statement. If any audited financial statement has been prepared for an individual disadvantaged owner (individually or jointly with his or her spouse) or for the DBE firm since the last certification date or its annual anniversary, then a complete photocopy of that document must also be provided, including but not limited to its asset and liability descriptions, balance sheets, and all its notes, footnotes, and accompanying statements and qualifications.

(B) MoDOT will notify each DBE firm by regular U.S. mail in writing at least thirty (30) days before the annual anniversary date of certification of this annual sworn affidavit and its accompanying document submission requirement. However, regardless of whether the firm receives that notification, it is the DBE firm's responsibility to timely submit the required affidavit and other documentation.

(C) If the DBE firm and its owners fail to make a timely submission to MoDOT of the required annual affidavits and documentation, or if the information contained therein is not accurate, complete and truthful, the firm will be deemed to have failed to cooperate, which shall subject the firm to removal of eligibility as a DBE, and to any one or more of the other sanctions provided in 49 CFR § 26.109(c), or elsewhere in state or federal law. An intentional failure to truthfully, accurately and completely notify MoDOT in the annual affidavit and its submissions of any change in status or circumstances may subject the DBE firm or its owners to federal or state criminal prosecution for fraud or other crimes, and may also result in contractual or other liability as well.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101 (b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rule covering this same material is published in this issue of the *Missouri Register*.

**Title 7—DEPARTMENT OF HIGHWAYS AND
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EMERGENCY RESCISSION

7 CSR 10-8.080 Determination and Review Procedures Governing the Failure to Perform a Commercially Use Function. This rule implemented the requirement of 47 CFR part 23 and section 23.47, that a disadvantaged business enterprise

(DBE) must perform a commercially useful function of all federal-aid contract work for which DBE credit is claimed, and governed the state determination and federal review of a rebuttable presumption that a DBE has not performed a commercially useful function.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri and United States Constitutions*. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

AUTHORITY: sections 226.020 and 226.150, RSMo 1994, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Emergency rule filed Feb. 15, 1996, effective Feb. 25, 1996, expired Aug. 22, 1996. Original rule filed Feb. 15, 1996, effective Aug. 30, 1996. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rescission covering this same material is published in this issue of the *Missouri Register*.

**Title 7—DEPARTMENT OF TRANSPORTATION
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EMERGENCY RULE

7 CSR 10-8.081 Ineligibility Complaints

PURPOSE: This rule discusses the procedures for, and confidentiality governing, the filing of a DBE firm ineligibility complaint, in accordance with 49 CFR §§ 26.87(a) and 26.109(b).

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not com-

ply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and this rule must be adopted in order to bring MoDOT's DBE rules into compliance with the federal DBE Program requirements. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of the related emergency rescissions and this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri and United States Constitutions*. The commission believes this emergency rule to be Fair to all interested persons and parties under the circumstances. Emergency Rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

(1) Filing an Ineligibility Complaint. Any person, firm, recipient, or other legal entity may file with MoDOT a written complaint alleging that a currently-certified firm is ineligible for DBE Program certification, and specifying the reasons why that firm is alleged to be ineligible. However, MoDOT will not accept a general allegation that a firm is ineligible without some supporting details or allegations; and MoDOT will not accept an anonymous complaint for purposes of 49 CFR § 26.87(a) compliance (although MoDOT may act upon the allegations in an anonymous complaint on its own initiative). As a matter of program and contract compliance, MoDOT encourages all DBE firms, prime contractors, other subcontractors, and their owners, officials and employees, to file a detailed ineligibility complaint, with as much supporting information as is available, whenever they have a legitimate reason to believe that a currently-certified DBE firm is not properly eligible for DBE certification under this chapter or under 49 CFR Part 26. All DBE firm ineligibility complaints should be addressed to and filed with MoDOT's DBE Liaison Officer, the External Civil Rights Administrator. An ineligibility complaint may be sworn under penalty of perjury of the laws of the United States as an affidavit before a notary public or other officer authorized to administer oaths, but that is not a legal prerequisite for filing an ineligibility complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified.

(2) MoDOT Processing of Ineligibility Complaints. Upon receipt of a signed ineligibility complaint including one or more detailed allegations, MoDOT will acknowledge the receipt of the complaint in writing; but a copy of the acknowledgement will not be sent to the DBE firm. MoDOT will review its records concerning the DBE firm in question, along with any material provided by the complainant or available from other sources within or without MoDOT. MoDOT will conduct any investigation it deems necessary under the circumstances, although MoDOT is not legally obligated to conduct any investigation beyond a document request and review. At an appropriate time in the complaint investigative phase, MoDOT will notify the DBE firm in writing that a complaint alleging the firm's ineligibility had been filed, and request additional information from the firm relating to the allegations. In that letter, MoDOT will provide the DBE firm with a general statement or summary of the allegation(s) against the DBE firm's continued certification.

(3) The MoDOT Determination and Future Actions. After MoDOT has reviewed the complaint and conducted any investigation it deems necessary, MoDOT shall make a determination whether there is reasonable cause to believe that the DBE firm is ineligible to be certified. If MoDOT finds reasonable cause to believe that the DBE firm is ineligible, MoDOT will provide written notice to the DBE firm that MoDOT proposes to find the firm ineligible for certification, which notice sets forth the reasons for that proposed determination. MoDOT will not provide the com-

plainant with that notice of reasonable cause or the preliminary findings set forth therein, but may advise the complainant that proceedings concerning the firm's DBE eligibility are continuing at MoDOT. In the event that MoDOT determines that reasonable cause does not exist, MoDOT will separately and confidentially notify the complainant and the DBE firm in writing of that determination and MoDOT's reasons for making that determination. All statements of reasons for findings on the issue of reasonable cause shall specifically reference the evidence in the record on which each reason is based.

(4) MoDOT Hearing or Other Due Process Review. When MoDOT notifies a firm that there is reasonable cause to remove its DBE eligibility on the basis of an ineligibility complaint and MoDOT's review and investigation of that complaint, MoDOT will follow the procedures required by 49 CFR § 26.87(d), and offer the DBE firm an opportunity for an informal hearing with a complete and verbatim record, or if the firm elects, an opportunity to present information and arguments in writing for a written record review, without going to a hearing. Such a reasonable cause notice shall be sent to the DBE firm by certified U.S. mail, return receipt requested. An informal hearing or written record review will be conducted and decided by an independent hearing officer for MoDOT. In the event the firm requests either an informal hearing or a written record review of a reasonable cause determination, MoDOT shall bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of 49 CFR Part 26 and this chapter. If the firm does not request either an informal hearing or the opportunity for a written record review within fifteen (15) days after the date the firm receives the reasonable cause notice, as shown on the return receipt card, then the file MoDOT's External Civil Rights Unit has developed on this eligibility complaint (along with any sworn affidavits of the staff or others) shall be turned over to the independent hearing officer to determine if, by a preponderance of the evidence present in the file before the hearing officer, MoDOT has proven that the firm does not meet the certification standards of 49 CFR Part 26 and this chapter.

(5) The Confidentiality of Information on a Complainant. Pursuant to 49 §§ 26.87(a) and 26.109(b), the identity of complainants shall be kept confidential by MoDOT and all its staff, including its hearing officer, at the complainant's election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to the firm, its owners or other parties, then MoDOT shall advise the complainant to determine if the complainant will waive the privilege of confidentiality. Complainants shall be advised that in some circumstances, their failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or informal hearing, if the allegations cannot be established without actually or effectively disclosing the identity of the complainant. Complainants shall further be notified that if the allegations of the complaint cannot be established by other available means, the complainant shall be expected to provide sworn testimony at an informal hearing or else a sworn affidavit for a written record review, to help MoDOT prove the firm is ineligible for certification by a preponderance of the evidence. If the complainant refuses to waive the confidentiality privilege so as to disclose his or her identity, or refuses to provide oral or written evidence where necessary to substantiate the complaint, then MoDOT will take whatever administrative action is appropriate on the complaint, including but not limited to dismissing the complaint for lack of supporting evidence.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals

to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rule covering this same material is published in this issue of the Missouri Register.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

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Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RESCISSION

7 CSR 10-8.090 Finality of Department Determinations in the Disadvantaged Business Enterprise Program. This rule provided general information on the administrative review available in the United States Department of Transportation, on any Disadvantaged Business Enterprise Program action or decision which is made by the Missouri Highways and Transportation Department or Commission.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

AUTHORITY: sections 226.020 and 226.150, RSMo 1994, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Emergency rule filed Feb. 15, 1996, effective Feb. 25, 1996, expired Aug. 22, 1996. Original rule filed Feb. 15, 1996, effective Aug. 30, 1996. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rescission covering this same material is published in this issue of the Missouri Register.

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EMERGENCY RULE

7 CSR 10-8.091 MoDOT Procedures and Hearings to Remove a Firm's DBE Eligibility

PURPOSE: This rule complies with the requirements of 49 CFR §§ 26.67, 26.87 and 26.89, by specifying the grounds for which MoDOT may institute proceedings to remove a firm's DBE certification and eligibility, and the hearing or other due process procedures involved.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's Adarand v. Pena opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and this rule must be adopted in order to bring MoDOT's DBE rules into compliance with the federal DBE Program requirements. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of the related emergency rescissions and this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The commission believes this emergency rule to be Fair to all interested persons and parties under the circumstances. Emergency Rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

(1) Scope of this Rule.

(A) This rule specifies the circumstances in which MoDOT will consider removing DBE eligibility from a firm which is currently certified as a DBE, and the procedures which will be followed to reach a determination of continued DBE eligibility. This rule also specifies the procedures which MoDOT will use to afford an individual owner of a DBE-certified firm and the firm due process if that owner's status is challenged or suspected as not qualifying that individual owner as socially and economically disadvantaged under 49 CFR Part 26. This rule will apply to:

1. Complaints of a DBE firm's ineligibility under 49 CFR § 26.87(a) and rule 7 CSR 10-8.081, when MoDOT notifies the DBE firm that there is reasonable cause to remove its DBE eligibility on the basis of an ineligibility complaint and MoDOT's review and investigation of that complaint.

2. MoDOT-initiated proceedings, where based upon notification by the DBE firm of a change in its status or circumstances, or other information which comes to MoDOT's attention, and after any investigation MoDOT External Civil Rights Unit deems appropriate, the MoDOT staff determine that there is reasonable cause to believe that a currently-certified DBE firm is ineligible. At that time, MoDOT shall provide written notification to the DBE firm by certified U.S. mail, return receipt requested, that MoDOT proposes to find the firm ineligible as a DBE, setting forth the specific reasons for that proposed determination. This statement of reasons for the finding of reasonable cause to remove the firm's DBE eligibility shall specifically reference the evidence in the record which MoDOT has developed to date, on which each rea-

son is based. These proceedings also include, but are not limited to, a potential removal of DBE certification where MoDOT has reason to believe that an individual owner classified as socially and economically disadvantaged is actually not so disadvantaged; and the loss of that disadvantaged status would likely result in the firm's loss of DBE eligibility.

3. USDOT-initiated proceedings, where a USDOT operating administration has determined that information in MoDOT's records or other information available to USDOT provides reasonable cause to believe that a firm which MoDOT certified as a DBE does not meet the eligibility criteria of 49 CFR Part 26. In such an event, the USDOT operating administration may direct MoDOT to initiate a proceeding to remove the firm's certification. If USDOT does direct MoDOT to initiate a proceeding to remove a firm's certification, that USDOT operating administration will provide the DBE firm and MoDOT with the reasons for that directive, including any relevant documentation or other information available to USDOT. When that USDOT action occurs, MoDOT will immediately commence and prosecute a proceeding to remove that firm's DBE eligibility, as provided by 49 CFR § 26.87(b), and by paragraph 2. of this subsection, in accordance with 49 CFR § 26.87(c).

(B) This rule does not apply to:

1. Firms which are seeking initial certification as a DBE, or which previously have been certified as a DBE but are undergoing review to determine if the firm will be certified by MoDOT for an additional three-year period. Their informal hearing or other administrative review process by an independent hearing officer within MoDOT after MoDOT External Civil Rights Unit have denied the firm's certification is addressed in rule 7 CSR 10-8.051, section (9).

2. An individual whose statement of personal net worth shows that the individual owner's personal net worth exceeds \$750,000, and so that individual's presumption of economic disadvantage is rebutted. In that event, MoDOT will simply notify that individual owner and the DBE firm in question in writing by U.S. mail that this owner is not economically disadvantaged and can no longer be used to support the firm's eligibility as a DBE. However, if that individual's loss of economic disadvantage status may render the firm ineligible as a DBE (which will usually be the case when an individual owner ceases to be economically disadvantaged), then MoDOT will immediately commence and prosecute a proceeding to remove that firm's DBE eligibility, as provided by 49 CFR § 26.87(b) and by paragraph (A)2. of this rule.

3. An individual owner of a DBE firm where MoDOT has reasonable cause to believe that such individual is not socially and/or economically disadvantaged, but that individual is only a minority owner and has no real control over the DBE firm, so his or her status is not necessary to continue the firm's DBE eligibility. Under those circumstances, MoDOT may take no immediate action, but may wait to resolve that issue when the firm next applies for certification. However, if that individual's loss of social and/or economic disadvantage status could possibly render that firm ineligible as a DBE (which will usually be the case when an individual owner ceases to be socially and economically disadvantaged), then MoDOT will immediately commence and prosecute a proceeding to determine whether that individual's presumption of social and/or economic disadvantage should be rebutted, and if so, whether MoDOT should remove that firm's DBE eligibility, as provided by 49 CFR § 26.87(b) and by paragraph (A)2. of this rule.

(2) MoDOT Hearing or Other Due Process Review. When MoDOT notifies a firm that there is reasonable cause to remove its DBE eligibility for any basis specified in section (1) of this rule, MoDOT will follow the procedures required by 49 CFR § 26.87(d), and offer the DBE firm an opportunity for an informal hearing with a complete and verbatim record, or if the firm elects, an opportunity to present information and arguments in writing for

a written record review, without going to a hearing. Such a reasonable cause notice shall be sent to the DBE firm by certified U.S. mail, return receipt requested. Such an informal hearing or written record review will be conducted and decided by an independent hearing officer for MoDOT. In the event the firm requests either an informal hearing or a written record review of the reasonable cause determination, MoDOT shall bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of 49 CFR Part 26 and this chapter. If the firm does not request either an informal hearing or the opportunity for a written record review within thirty (30) days after the date the firm receives the reasonable cause notice, as shown on the return receipt card, then the file MoDOT's External Civil Rights Unit have developed on this eligibility complaint (along with any sworn affidavits of the staff or others) shall be turned over to the independent hearing officer to determine if, by a preponderance of the evidence present in the file before the hearing officer, MoDOT has proven that the firm does not meet the certification standards of 49 CFR Part 26 and this chapter.

(3) The Hearing Officer. The hearing officer which conducts the informal hearing or written record review shall also determine the decision in that proceeding for MoDOT. The hearing officer shall be knowledgeable about the DBE certification requirements of 49 CFR Part 26 and this chapter. At MoDOT's sole election, the hearing officer may be a licensed attorney, a registered professional engineer, or any other qualified individual. If the hearing officer is not a licensed attorney, the hearing officer may have present or receive assistance from a licensed attorney knowledgeable about the DBE Program, to aid and advise the hearing officer on evidentiary issue rulings and other legal or procedural questions. In any event, the hearing officer will not be from MoDOT's External Civil Rights Unit, and will not take any direction from that unit, its personnel, or other MoDOT personnel who may have taken part in actions leading to the reasonable cause determination, or in seeking to implement the proposal to remove the firm's DBE eligibility. The hearing officer shall decide all evidentiary or other procedural issues which arise in the course of the informal hearing or written record review proceedings, as well as solely issuing the final written determination of the firm's DBE eligibility for MoDOT. The hearing officer shall also be the sole judge of the credibility of witnesses in any MoDOT informal hearing or written record review.

(4) The Informal Hearing Process.

(A) If a DBE firm requests an informal hearing to resolve the question of its DBE eligibility, that informal hearing shall be held at a location of MoDOT's choosing in Missouri before a notary public who will administer oaths, and who will prepare a complete and verbatim written record of the hearing at MoDOT's expense. The informal hearing is not a "contested case" under the provisions of Chapter 536, RSMo. The DBE firm and/or its owners need not be represented by an attorney licensed to practice in Missouri, but they have the right to such legal representation during the informal hearing process if they so choose. The DBE firm may be represented by a controlling owner, to the extent that practice does not constitute the unauthorized practice of law. MoDOT shall be represented by a member of the External Civil Rights Unit, and by a licensed attorney.

(B) At least ten (10) days prior to an informal hearing, the MoDOT External Civil Rights Unit shall provide the DBE firm and the hearing officer with a copy of the entire record pertinent to the issues, upon which the reasonable cause findings were made. That record shall be received into evidence over any objection. The DBE firm and MoDOT shall have the right to supplement the record prior to or at the time of the informal hearing, by affidavit or other written documentation, as well as by sworn testimony given during the hearing. Within reason, all notarized affi-

davits sworn or affirmed under penalty of perjury, and all other competent and relevant evidence presented by the parties, shall be received by the hearing officer and considered for what it is worth. However, as to any affidavits or other documentary evidence which are disputed or objected to upon the record, the objecting party may present opposing sworn verbal testimony or affidavits at a later date (if the hearing officer deems that necessary), to be scheduled by the hearing officer so as to give the objecting party a fair and reasonable opportunity to respond. If a party wishes to do so, that party may, in addition to cross examination of an adverse witness, present one or more sworn witnesses to rebut oral or written testimony given previously at the informal hearing.

(C) All witnesses shall be sworn by the notary public, or declare or affirm their testimony under penalty of perjury, in accordance with Section 492.060 RSMo and 49 CFR Part 26, before they are permitted to testify. Sworn testimony may be given in statement form or in question and answer form. Each witness shall be subject to cross-examination. Depositions for testimonial purposes may be used when agreed to by both parties and when the witness agrees to appear voluntarily. Or, a deposition may be used if a Missouri court so orders and/or issues a subpoena or subpoena duces tecum to compel the witness's attendance and testimony under such terms and conditions as the court deems appropriate, in order to provide a fair proceeding and due process to each party. Any opening or closing statements requested by the hearing officer from counsel or other party representatives shall not be considered as evidence, unless they are given as sworn testimony, or affirmed or declared under penalty of perjury, and they are subject to cross examination by the opposing party. Any party, during the presentation of its case in chief or in its rebuttal evidence, may call as a witness any person or party present; but the hearing officer has no authority to issue subpoenas or subpoenas duces tecum to compel testimony or the production of evidence.

(D) In proceedings where there is a complaining witness who has agreed to be identified and to disclose all of its prior submissions and complaints to the DBE firm, or in other proceedings under this rule upon written application to all parties; where the hearing officer deems it appropriate and in the best interests of developing a fair and complete record; a complaining witness may be authorized to participate as an additional party at the hearing, to present relevant and competent evidence and testimony, and to cross-examine and rebut witnesses and testimony, concerning whether the DBE firm should remain certified and eligible. Provided, however, that MoDOT shall also retain the full right and opportunity to present its relevant, competent and substantial evidence and testimony on the eligibility issues, and to cross-examine and rebut opposing witnesses.

(E) As time, the interests of fairness, or scheduling needs may require, the hearing officer may continue or reschedule an informal hearing, to begin or to resume on a specific date, at the same or at another location. However, the hearing officer is not compelled to consider or rule favorably upon a written or oral request for a continuance or for resumption of the hearing on a later date, except when that is required to provide the minimum due process required for a fair hearing, such as when a later resumption may be warranted to provide an opportunity to complete a party's case in chief, or to rebut unexpected opposing testimony and evidence. During the rebuttal phase of the informal hearing, no new oral, written, documentary or other evidence should be received unless it is relevant to rebut evidence previously presented by an opposing party.

(F) A reasonable time after the conclusion of a hearing, the hearing officer shall provide each party with a complete copy of the transcript and the rest of the record evidence upon request, if that party is willing to pay MoDOT for the actual cost of preparing a complete copy of the record. If any party so requests, the hearing officer shall afford each party the opportunity to file a brief with proposed findings of fact and a recommended decision,

which should be complete with citations to the record and to other supporting record evidence, on a date specified.

(G) As specified in 49 CFR § 26.87(d)(1), MoDOT bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the DBE certification standards of 49 CFR Part 26, before the hearing officer may issue a decision that the firm is no longer eligible for DBE certification.

(5) The Written Record Review.

(A) If a DBE firm requests a written record review to resolve the question of its DBE eligibility, the MoDOT External Civil Rights Unit shall provide the DBE firm by certified U.S. mail, return receipt requested, and the independent hearing officer with a copy of the entire record pertinent to the issues upon which the reasonable cause findings were made. That record shall contain one or more sworn affidavits or certifications, or possibly verbatim records of sworn verbal statements made under oath, affirmation or other declaration under penalty of perjury. That record shall be received into evidence by the hearing officer over any objection of the firm or its owners.

(B) The DBE firm shall have up to thirty (30) days after the date the External Civil Rights Unit mails the entire record to the firm in order to supplement that record with its own evidence, including affidavits and other sworn documents. Provided, that if the DBE firm intends to submit any verbatim records of sworn verbal statements, the firm or its legal counsel must make arrangements with the MoDOT External Civil Rights Unit so that legal counsel for MoDOT (an attorney who is not the hearing officer) may be present when the sworn statement is made, so MoDOT can also examine the witness; and the DBE firm may not use or abuse this process in lieu of having an informal hearing. Upon good cause shown, the independent MoDOT hearing officer may extend the time available to the DBE firm to submit its supplement to the record opposing the removal of eligibility.

(C) Within fifteen (15) days after the DBE firm has submitted its supplement to the written record to both the independent hearing officer and the attorney for the MoDOT External Civil Rights Unit, the MoDOT External Civil Rights Unit's attorney may request the hearing officer in writing to be granted leave to present additional sworn written evidence, solely to rebut any evidence submitted by the DBE firm or its legal counsel. The written motion and showing of good cause must be sent to the DBE firm (or its legal counsel) and must describe specifically what additional sworn evidence the MoDOT External Civil Rights Unit intend to develop, the identity of each additional witness, and what each witness is expected to testify to in rebuttal. Upon good cause shown, and after consideration of any written suggestions of the DBE firm or its legal counsel, the hearing officer may grant MoDOT leave to supplement the written record, under such terms and conditions as the hearing officer deems appropriate to assure a fair and accurate written record.

(D) If any party so requests the hearing officer in writing before the written record is complete, the hearing officer shall afford each party the opportunity to file a brief with proposed findings of fact and a recommended decision, which should be complete with citations to the record evidence, on a date specified.

(E) As specified in 49 CFR § 26.87(d)(3), MoDOT External Civil Rights Unit and their counsel bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the DBE certification standards of 49 CFR Part 26, before the hearing officer may issue a decision that the firm is no longer eligible for DBE certification.

(6) The Hearing Officer's Determination. At a reasonable time after the conclusion of the informal hearing or the written record development phase, and any subsequent briefing, the independent hearing officer shall issue written findings and a determination of DBE eligibility of the firm in accordance with 49 CFR § 26.87(f)

and (g), supported by citations to the record. The written findings and determination shall be mailed to the firm by certified U.S. mail, return receipt requested, and also served on MoDOT External Civil Rights Unit counsel; plus a copy shall be mailed to any third-party complainant or USDOT operating administration which caused the proceeding to be initiated. If the hearing officer finds that the MoDOT External Civil Rights Unit failed to prove by a preponderance of the evidence that the firm does not meet the certification standards for DBEs in 49 CFR Part 26, then the hearing officer shall determine that the firm retains its status as a DBE firm. If the hearing officer finds that the preponderance of the evidence shows that the firm does not meet any one certification standard for DBE certification in 49 CFR Part 26, then the hearing officer shall notify the firm in the written determination that effective that date, the firm has been declared ineligible as a DBE, and has been removed from the MoDOT roster of eligible, certified DBE firms, plus the consequences of that action. If the hearing officer's decision is to remove the firm's DBE certification eligibility, the written findings and determination shall also include the required notice of the availability of an appeal of the removal of eligibility to USDOT under 49 CFR §§ 26.87(g) and (j), and 26.89. Also, if the proceedings were initiated based upon a third-party complaint of ineligibility and the hearing officer has not determined that the firm is ineligible for DBE certification, the written findings and determination shall include the required notice of the availability of an appeal to USDOT by the complainant, under 49 CFR § 26.89(a)(2).

(7) MoDOT Action Resulting From a Removal of DBE Eligibility. If the determination of the independent hearing officer is to remove the firm's DBE certification and eligibility, then MoDOT External Civil Rights Unit staff shall separately but promptly take the actions required by 49 CFR § 26.87(i). Also, MoDOT's Resident Engineers and their staff shall take any other or related actions which may be required by the USDOT-assisted contracts on which the firm was working, whose DBE eligibility has now been removed.

(8) The Finality of MoDOT's Determination. The determination of the hearing officer under this rule is final as to MoDOT, but that determination remains appealable to USDOT under the provisions of 49 CFR §§ 26.87 and 26.89, and until USDOT has resolved such an appeal, the determination is not final under 49 CFR Part 26. Therefore, for purposes of Missouri law, the MoDOT determination is not a final state administrative decision, and it is not subject to judicial review in Missouri's courts under the provisions of Chapter 536 RSMo, or 49 CFR Part 26.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

EMERGENCY RULE

7 CSR 10-8.101 The Effect of a USDOT Certification Appeal

PURPOSE: This rule advises of the legal effect of a USDOT DBE certification appeal upon MoDOT, and upon the other parties involved.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and this rule must be adopted in order to bring MoDOT's DBE rules into compliance with the federal DBE Program requirements. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of the related emergency rescissions and this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The commission believes this emergency rule to be Fair to all interested persons and parties under the circumstances. Emergency Rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

(1) USDOT Appeal Determination Binding Upon MoDOT. If an appeal of a MoDOT DBE certification action is taken to USDOT under 49 CFR § 26.89, the resulting USDOT determination is binding upon MoDOT, but not necessarily other recipients; under 49 CFR § 26.91(a). MoDOT shall then take any actions required by 49 CFR § 26.91(b).

(2) USDOT Appeal Determination Not Binding Upon MoDOT. If an appeal of another USDOT recipient's DBE certification removal or denial action is taken to USDOT under 49 CFR § 26.89 and USDOT upholds that other recipient's denial of certification or removal of DBE eligibility, MoDOT is not governed by that determination, but MoDOT may commence a proceeding to remove the firm's DBE eligibility with MoDOT under 49 CFR § 26.87, as provided in 49 CFR § 26.91(c). In such a proceeding, MoDOT shall not remove the firm's eligibility until a proceeding under rule 7 CSR 10-8.091 is concluded, and the hearing officer determines in that proceeding that the firm's eligibility should be removed. Likewise, if USDOT has reversed the decision of another recipient to deny certification or remove a firm's eligibility, then under 49 CFR § 26.91(c) MoDOT shall take that USDOT determination into consideration, but MoDOT is not required to certify the same firm based upon that USDOT decision.

(3) Judicial Review of a USDOT Determination. Judicial review of a USDOT appeal determination of a denial of DBE certification, or of the removal of a firm's DBE eligibility, whether that USDOT appeal is from MoDOT or another recipient's determination, is not subject to the provisions of Chapter 536 RSMo, and it does not lie in the state courts of Missouri.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rule covering this same material is published in this issue of the Missouri Register.

Title 7—DEPARTMENT OF TRANSPORTATION Division 10—Missouri Highways and Transportation Commission Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RULE

7 CSR 10-8.111 Prompt Payment, Recordkeeping and Audit Requirements.

PURPOSE: This rule sets forth the DBE Program requirements for the prompt payment of contractors, subcontractors and suppliers, plus related recordkeeping and audit requirements, on federally-assisted contracts awarded by MoDOT or any other Missouri recipient receiving USDOT funding through MoDOT.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and this rule must be adopted in order to bring MoDOT's DBE rules into compliance with the federal DBE Program requirements. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of the related emergency rescissions and this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The commission believes this emergency rule to be Fair to all interested persons and parties under the circumstances. Emergency Rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

(1) Prompt Payment Requirements.

(A) MoDOT pays all contractors the sums due them, and when they are due, in compliance with state and federal law, including but not limited to Section 34.057 RSMo. In turn, MoDOT and USDOT in 49 CFR § 26.29(a), both require that all contractors pay all subcontractors and suppliers for their satisfactory performance of services or sale of materials and supplies, in compliance with the Missouri Prompt Payment statute, Section 34.057, Revised Statutes of Missouri. MoDOT and USDOT also require the return of all retainage withheld from any subcontractor promptly within the period allowed by Section 34.057 RSMo, after that subcontractor's work is satisfactorily completed. For the purposes of compliance with the prompt payment requirements of 49 CFR Part 26:

1. A subcontractor has satisfactorily completed its work if MoDOT has paid the contractor for all the work which the subcontractor was to (and did) perform, and MoDOT has accepted from the contractor by partial acceptance or final acceptance, those portions of the project containing all of the subcontractor's work.

2. A subcontractor has satisfactorily completed its work if MoDOT has paid the contractor for all the work which the subcontractor was to (and did) perform, and if the subcontractor has fulfilled all of its obligations to the prime contractor and to MoDOT, for and incident to that subcontract work.

3. For purposes of compliance with 49 CFR § 26.29(a), MoDOT reserves the optional and discretionary right to determine if a subcontractor has satisfactorily completed all of its subcontract work, including all of its obligations to the prime contractor and to MoDOT for and incident to that subcontract work. MoDOT shall

not make such a determination of satisfactory completion unless MoDOT has received a written complaint from or on behalf of a subcontractor, and MoDOT has contacted both the subcontractor and the prime contractor for further information. MoDOT shall not make a determination of satisfactory completion unless MoDOT is firmly convinced that the subcontractor has fulfilled all of its obligations to the prime contractor and to the Commission; and the subcontract work has been accepted by MoDOT or is now acceptable to MoDOT as satisfactory in all respects. The prime contractor must provide MoDOT and the subcontractor with legal justification in writing under Section 34.057 RSMo as to why full payment is not yet due and owing to the subcontractor. If MoDOT determines in writing that the subcontractor has completed all of its project subcontract obligations to the prime contractor and to the Commission, MoDOT shall provide copies of that written determination to the subcontractor and to the prime contractor. Within the time provided by Section 34.057 RSMo, the prime contractor should then complete payment to that subcontractor. However, the final resolution of any outstanding dispute between a prime contractor and a subcontractor over the issue of whether the subcontractor was promptly and fully paid for its project work remains with Missouri's courts, under Section 34.057 RSMo.

4. MoDOT has and will continue to have a complaint process for any subcontractor (regardless of whether it is a DBE firm) which believes it has not been paid in a timely manner for its completed project work. When a written complaint is received by the MoDOT project Resident Engineer, MoDOT project office personnel shall conduct a review of the project work status, payments made to the prime contractor, project payments the prime contractor has made to the subcontractor, other contract and subcontract compliance by both parties, in consideration of the allegations made by the complainant. A written response shall be prepared by MoDOT and mailed or delivered to the prime contractor and the subcontractor. The MoDOT project office will continue to monitor the situation until it is apparent that both parties are satisfied. If the subcontractor has not been paid in full by the prime contractor at the time the prime contractor submits final payment documentation to MoDOT, the prime contractor's legal justification for why the subcontractor has not been paid in full must be noted as an amendment to the assurance of satisfaction of all claims, if there is no amendment and the subcontractor's claim for payment is not satisfied, the prime contractor will not receive final payment from MoDOT until the prime contractor has submitted to MoDOT satisfactory legal justification for not paying the subcontractor, as an amendment to the final payment documentation. The final resolution of any outstanding dispute between a prime contractor and a subcontractor over the issue of whether the subcontractor was promptly and fully paid for its project work remains with Missouri's courts, under Section 34.057 RSMo.

(B) As USDOT requires, this prompt return of retainage to every subcontractor is not discretionary upon the contractor's determination that the subcontractor's work is satisfactorily completed. Instead, if MoDOT has paid the contractor for all the work which the subcontractor was to (and did) perform, and MoDOT has determined under this rule and 49 CFR Part 26 that the subcontractor's work was completed satisfactorily, then the contractor must promptly make any remaining payments to and return all retainage withheld from that subcontractor, or risk liability under the terms of Section 34.057 RSMo. However, the final resolution of any outstanding dispute between a prime contractor and a subcontractor over the issue of whether the subcontractor was promptly and fully paid for its project work remains with Missouri's courts, under Section 34.057 RSMo.

(C) Except as modified by this rule, each contractor must comply with all other provisions and requirements of Section 34.057, RSMo. These requirements apply to each contractor, regardless of whether the subcontractor or supplier involved is a DBE certified firm or not. For the purposes of DBE Program administration, the contractor's compliance (or not) with the provisions of this rule,

shall be determined by MoDOT External Civil Rights Unit personnel.

(2) Recordkeeping Requirements. All contractors and subcontractors must retain records of all payments made or received relating to USDOT-assisted contract work, for 3 years from the date of final payment. These records, in all forms and in any medium, must be available for inspection and copying, upon request without prior notification during normal business hours, by any authorized representative of MoDOT or USDOT. MoDOT may also obtain and maintain records of actual payments made by contractors to DBE firms, for subcontract or supply work committed to those DBE firms at the time of the USDOT-assisted contract award.

(3) Compliance Audits.

(A) USDOT, MoDOT, or authorized agents or representatives of either of these entities, may perform audits of contract payments to contractor, subcontractor and supplier firms. The audits may review contractors' payments to any or all subcontractors and suppliers, whether DBE firms or not, to ensure that the actual amount paid to DBE subcontractors and suppliers equals or exceeds the dollar amounts stated in the schedule of DBE participation; that there were no kickbacks, rebates or other concealed, false or fraudulent payments made or required; and that the contractor's payments were made promptly, in compliance with Section 34.057, RSMo. The audits also may review compliance with any other provisions of this Chapter or 49 CFR Part 26 by any contractor, subcontractor or supplier. By participating in any USDOT-assisted contract or subcontract work, or tendering supplies as a DBE firm for such work, each contractor, subcontractor or DBE supplier firm consents to such audits, and agrees to provide all documentation and information requested during the audit for inspection and copying voluntarily and without charge.

(B) USDOT, MoDOT, and other authorized agents or representatives of either of these entities, also reserve the right to audit all contractors, subcontractors, and DBE suppliers, participating in any USDOT-assisted contract awarded by the Commission or MoDOT, or awarded by any recipient of USDOT funding through MoDOT, to determine their general compliance with each and every provision of this chapter and 49 CFR Part 26. By participating in any USDOT-assisted contract or subcontract work, or tendering supplies as a DBE firm for such work, each contractor, subcontractor or DBE supplier firm consents to such audits, and agrees to provide all documentation and information requested during the audit for inspection and copying voluntarily and without charge.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

EMERGENCY RULE

7 CSR 10-8.121 MoDOT DBE Program Annual Goals and Contract Goals

PURPOSE: *This rule describes how MoDOT will set its annual DBE Program goal, and its individual contract goals on USDOT-assisted contract work.*

EMERGENCY STATEMENT: *Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's Adarand v. Pena opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and this rule must be adopted in order to bring MoDOT's DBE rules into compliance with the federal DBE Program requirements. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of the related emergency rescissions and this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The commission believes this emergency rule to be Fair to all interested persons and parties under the circumstances. Emergency Rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.*

(1) Annual Overall Program Goal.

(A) MoDOT will set its annual overall DBE Program goal (or goals) as a percentage of all federal aid highway funds for the coming year. The goal will be submitted to USDOT by August 1 of each year. MoDOT will also submit a narrative of the goal setting process including participants, the evidence utilized, and adjustments made. The narrative will state what percentage is expected to be met by race neutral and race conscious means.

(B) Public Participation. In order to ensure public participation, MoDOT will consult DBE firms, DBE organizations, Contractor Organizations, Local public Agencies, the general public, and other interested and knowledgeable parties. MoDOT will publish the proposed overall goal in general circulation, minority and female focused publications, trade association publications, and the MoDOT website. Written comments can be directed to MoDOT's DBE Liaison Officer. MoDOT will publish a notice of its goal-setting process by June 1 of each year in order to allow thirty (30) days for evidence inspection and public comment.

(C) Amount of Goal. MoDOT may use an interim goal setting mechanism while it updates its availability calculation basis to set its DBE goals based upon the most legally defensible methodology. MoDOT may consult with economics and statistical experts to assist in adopting a goal setting methodology that best meets the constitutional requirements of narrow tailoring in setting MoDOT's overall DBE goal.

(D) Goal-Setting Process.

1. MoDOT will submit its overall goal to USDOT on August 1 of each year, commencing with August 1, 2000. Before establishing the overall goal each year, MoDOT will consult with minority, female, and general contractor groups, community organizations, and other officials or organizations. These groups include, but are not limited to, the Minority Contractors Associations within the state, Women in Construction, National Association of Women in Construction, Kansas City Hispanic Contractors Association, the Associated General Contractors, Heavy Constructors Association, Associated General Contractors of St. Louis, St. Louis City, City of Kansas City, other municipal entities, and any other organization or individuals necessary to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on

opportunities for DBEs, and MoDOT's efforts to establish a level playing field for the participation of DBE firms.

2. Following this consultation, MoDOT will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Headquarters Office for 30 days following the date of the notice. MoDOT and the USDOT will accept comments on the goals for 45 days from the date of the notice. Normally, MoDOT will issue the notice by June 1 of each year. The notice will include addresses to which comments may be sent and addresses, including office and website addresses where the proposal may be reviewed. MoDOT will begin using the overall goal on October 1 of each year, unless other instructions have been received from USDOT.

3. MoDOT will include a summary of information and comments received during this public participation process and our responses in the overall goal submission to the USDOT.

(E) Race- and Gender-Neutral Means.

1. MoDOT will strive to meet the maximum feasible portion of the overall annual goal by the race neutral means. Race neutral participation involves affirmative action to assist all small business contractors and subcontractors. MoDOT uses the following race-neutral means to increase DBE participation:

- Where feasible MoDOT will unbundle large contracts to make them accessible to small businesses.
- Encouraging prime contractors to subcontract portions of work normally done by their own forces, when subcontractors submit a lower quote.
- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation.
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing, by such means intended to provide services to help DBEs, and other small businesses, in obtaining bonding and financing.
- Providing technical assistance and other services.
- Carrying out information and communications programs on contracting procedures and specific contract opportunities by ensuring the inclusion of DBEs, and other small businesses, on mailing lists for bidders, and ensuring the dissemination bidders lists of potential subcontractors.
- Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency.
- Ensuring distribution of the DBE director, through print and electronic means.
- Assisting DBEs and other small businesses to develop the capability to utilize emerging technology and conduct business through electronic media.

2. The amount of the goal estimated to be achieved by race-neutral means will be provided upon completion of the availability study and analysis set out above.

3. MoDOT does not operate a DBE program on projects wholly funded by state funds, therefore, an analysis of the DBE participation on these projects participation over and above the USDOT assisted projects goals, and past participation of DBE firms as prime contractors will be completed in conjunction with the availability analysis. This participation represents the race-neutral participation achieved by MoDOT and will be used to develop a statistical relationship to estimate the amount expected to be achieved by race-neutral means.

4. MoDOT will adjust the estimated breakout of race-neutral and race-conscious participation to reflect actual DBE participation and will tract and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE

participation includes, but is not necessarily limited to, the following:

- DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures.
- DBE participation through a subcontract that does not carry a DBE goal.
- DBE participation on a prime contract exceeding the contract goal.

(2) Project Goals on USDOT-Assisted Contract Work.

(A) MoDOT will use contract goals to meet any portion of the overall goal MoDOT does not project being able to be met using race-neutral means. MoDOT will establish contract goals only on those USDOT assisted contracts with subcontracting possibilities.

(B) The External Civil Rights Unit is responsible for setting all DBE goals on MoDOT let projects. The unit is also responsible for review and concurrence on all off-system, aviation, transit, enhancement, consultant, and any other sub-recipient project DBE goal.

(C) The project goal is set by reviewing the type of project, elements of work to be performed, time frame, geographical location, history of DBE and Non-DBE usage, and available DBE firms. The goal will be expressed as a percentage of the total amount of a USDOT assisted contract.

(D) MoDOT will always attempt to ensure that its DBE program continues to be narrowly tailored to overcome the effects of discrimination, and MoDOT will adjust its use of contract goals accordingly, as directed in 49 CFR § 26.51. MoDOT welcomes all public comments regarding any contract goal or its contract goal-setting processes. These comments should be made in writing, and sent to MoDOT's External Civil Rights Administrator.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

EMERGENCY RULE

7 CSR 10-8.131 DBE Participation Credit Toward Project or Contract Goals.

PURPOSE: This rule describes how DBE firm participation credit will be awarded by MoDOT toward a USDOT-assisted contract DBE participation goal.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's Adarand v. Pena opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and this rule must be adopted in order to bring MoDOT's DBE rules into compliance with the federal DBE Program requirements. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of the related emergency rescissions and this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The commission believes this emergency rule to be Fair to all interested persons and parties under the circumstances. Emergency Rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

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(1) DBE Participation Computed. DBE participation will be credited by MoDOT only in compliance with 49 CFR § 26.55, and only for the value of the work actually performed by the DBE firm toward the DBE contract goal. The contract work performed by the DBE firm must provide a "commercially useful function" as specified in 49 CFR § 26.55(c), in order to receive DBE credit toward a contract goal.

(2) DBE Participation by Classification. DBE firm contract credit varies, based upon the MoDOT classification of that DBE firm, and based upon the nature of the services the DBE firm actually performs on the USDOT-assisted contract, as provided in 49 CFR § 26.55. DBE credit will be counted by MoDOT as directed by USDOT, its regulations in 49 CFR Part 26, and USDOT's informal guidance; and will generally be counted in the following manner:

(A) Manufacturer. DBE credit is given for the entire value paid to a DBE manufacturer for materials furnished which become a permanent part of the project work. A manufacturer is a firm that owns and operates the facilities to produce the product required by the project and purchased by the contractor or subcontractor.

(B) Supplier. DBE credit is given for sixty (60) percent of the value paid to a DBE supplier firm for materials which it furnishes and which become a permanent part of the project work. A supplier sells good to the general public and maintains an inventory at an owned or leased warehouse or store. Bulk items such as steel, petroleum products, or rock do not have to be maintained in an on-site inventory, provided that the supplier regularly sells such products. Credit will not be given for the cost of the materials and also for the hauling of those same materials. Transportation costs for the materials are deemed part of the total cost of the products supplied.

(C) Broker. DBE credit is given for the entire amount of the broker fees or commission received by the DBE broker for materials it purchases, services it obtains, or equipment it procures and resells to a MoDOT contractor. However, no DBE credit is provided for the actual material costs, service charges, or equipment costs to the contractor. Fees or commissions are defined as the difference between what the DBE firm paid for the materials, services or equipment it brokered, and the price paid by the contractor to the DBE firm for those materials, services or equipment. A broker does not manufacture or act as a supplier of the materials, services or equipment, on a regular basis; or meet the criteria for being a manufacturer or supplier.

(D) Trucker. DBE credit is given for the entire amount of transportation or hauling charges paid to a DBE trucker, if the majority of the project trucking or hauling is performed by that DBE trucker firm, with employees of that DBE trucker, using vehicles and equipment owned or leased on a long-term basis by the DBE trucker firm. Trucking services provided in vehicles or equipment leased for just that project, or for a shorter period than the project trucking work, receive no DBE trucking credit. Further, to be a DBE trucking firm and receive DBE trucking credit, at least one truck actually owned by the DBE trucking firm must be used on that project work to haul project materials or supplies. Full DBE trucking credit will not be given for leased trucks unless they are leased from another DBE firm, DBE owner operators, or a recognized commercial leasing operation, and the lease is of a sufficient term. Firms licensed by the Missouri Public Service Commission

as leasing agents qualify as a recognized leasing operation. The leasing of trucks from the prime contractor will not be credited toward meeting a DBE goal, except as a broker, to the extent of the fees and commissions involved (but not the trucking costs). This type of relationship must be approved in advance by MoDOT External Civil Rights Unit personnel, and will be subject to strict scrutiny.

(E) DBE Contractor. Credit is given for the entire amount paid to a DBE prime contractor for labor and materials provided to perform the contract work; except that no credit will be given for labor and materials provided and installed by other contractors or subcontractors which are not DBE firms, approved by MoDOT to perform DBE subcontract work on that contract. Any DBE prime contractor must perform at least thirty (30) percent of the contract work with the DBE firm's own employees; and the DBE firm must order and pay for all its own supplies and materials, to receive this credit.

(F) DBE Subcontractor. Credit is given for the entire amount paid to a MoDOT-approved DBE subcontractor on a contract, for all the labor and materials provided and installed by the DBE firm to perform a defined and clearly measurable portion of the contract work. Any DBE firm must perform at least thirty (30) percent of the firm's subcontract work with the DBE firm's own employees, using the DBE firm's own (owned or leased) vehicles, and the DBE firm must order and pay for all of the supplies and materials which it installs and provides.

(3) Supporting Documentation Required. By bidding on a USDOT-assisted contract, or by agreeing to provide manufacturing, broker, subcontractor or supplier services for such work, each contractor, their subcontractors, and all DBE manufacturers, brokers, subcontractors and suppliers, agree to provide MoDOT or USDOT and their agents or representatives with full and complete copies of all documentation of ownership, leasing, payrolls, payments, charges, rebates, kickbacks, invoices, and all manner of related documentation, so that MoDOT and USDOT know and understand accurately and completely how much was paid and received, in gross and net amounts, for DBE contract credit computation purposes. This documentation is also subject to later audit by MoDOT, USDOT, or their agents and representatives. The failure to accurately and completely represent the gross and net payments, and to provide all documentation required to show the full and complete transactions involved, may be fraudulent, and may subject all firms and persons involved to civil suit and sanction, criminal punishment including fines or imprisonment, and other contract or administrative sanctions, by MoDOT, USDOT, or other agencies of the State of Missouri or the United States.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rule covering this same material is published in this issue of the Missouri Register.

Title 7—DEPARTMENT OF TRANSPORTATION Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RULE

7 CSR 10-8.141 USDOT-Assisted DBE Contract Awards and Good-Faith Efforts

PURPOSE: This rule sets forth the MoDOT requirements and processes for determining if a bidder has made a good faith effort to achieve a DBE contract goal in a USDOT-assisted contract.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and this rule must be adopted in order to bring MoDOT's DBE rules into compliance with the federal DBE Program requirements. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of the related emergency rescissions and this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The commission believes this emergency rule to be Fair to all interested persons and parties under the circumstances. Emergency Rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

(1) Contract Bidding Requirements.

(A) The award of federally-assisted contracts having DBE contract goals requires the bidder to submit a completed MoDOT DBE Participation form as a part of the bidding documents, including a complete list of the DBE firms to be utilized (including manufacturers, suppliers, haulers or truckers, brokers, service providers, and subcontractors); together with a complete detailed listing or explanation of the type and exact nature of the contract services the DBE firm will be providing, if the bidder is awarded the contract. If the bid of the low bidder (as computed) does not show that contractor will meet the full DBE contract goal, that contractor will be afforded the opportunity to further document its good faith efforts to reach that contract goal. However, the bidder will not be given the opportunity to submit additional proposed DBE participation, to try to satisfy the contract goal belatedly. MoDOT treats a bidder's compliance with the good faith efforts requirements of this rule and 49 CFR Part 26 as a matter of bidding responsiveness, and a bid which is otherwise low will be rejected as non-responsive if it does not meet these USDOT requirements.

(B) The DBE Participation portion of the bidding documents must include the following at the time of the bid submission:

1. The names and addresses of all DBE firms that will participate in the contract work (if awarded to that bidder).
2. A detailed description of the type and nature of the work that each DBE firm listed will perform.
3. The dollar amount of the contract value of each DBE firm's participation, in total and the portion which is applicable to the contract's DBE goal.
4. Written and signed documentation of the bidder's commitment to use each DBE firm manufacturer, subcontractor, broker or supplier it has submitted, to meet the DBE contract goal.
5. Written and signed confirmation from each DBE firm listed that the DBE firm shall participate in the contract work as provided in the bidding contractor's commitment, if the bidder is awarded the contract. And,
6. If the bidder's list of DBE firms and services does not show full compliance with the entire DBE contract goal set by MoDOT, the bidder must also include an accurate and complete listing or documentation of its good faith efforts to meet that DBE

contract goal, even though the bidder did not succeed in obtaining the full DBE participation requested by the contract goal.

(C) If a low bidder has not met the DBE contract goal, the bidder's documentation of good faith efforts must fully comply with the requirements of 49 CFR § 26.53 and Appendix A to 49 CFR Part 26. MoDOT will review the low bidder's documentation, and if the bidding contractor has documented adequate good faith efforts, MoDOT will recommend award of the contract to that low bidder, provided that the bid is otherwise responsive and the bidder is otherwise responsible and qualified to bid.

(2) Failure to Document an Adequate Good-Faith Effort. In accordance with 49 CFR § 26.53(d), if MoDOT determines that the apparent low bidder has failed to meet the DBE contract goal, and has not documented adequate good faith efforts to achieve that contract goal in its bidding documents, then MoDOT will notify the bidder by telephone, fax transmission and/or in writing of that determination, and will offer the bidder the opportunity for administrative reconsideration of its good faith efforts, in adequate time prior to the Commission meeting at which this contract is scheduled to be awarded.

(3) Administrative Reconsideration.

(A) The apparent low bidder must make a written request for administrative reconsideration of the MoDOT finding of insufficient DBE participation and inadequate good faith efforts, within two (2) working days of the date the bidder was first notified by phone or in writing of MoDOT's determination of the lack of good faith efforts. The bidder's written request for administrative reconsideration may be delivered, faxed or e-mailed to:

External Civil Rights Administrator
Missouri Department of Transportation
105 West Capitol Avenue, P.O. Box 270
Jefferson City, MO 65102-0270

Fax: (573) 526-5640
Telephone: 1-888-ASK-MODOT (1-888-275-6636)
E-Mail: taeges@mail.modot.state.mo.us

(B) If the bidder makes a timely request for administrative reconsideration, the bidder will have the opportunity to meet in person with the Administrative Reconsideration Committee, to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Administrative Reconsideration Committee may be constituted as MoDOT deems appropriate and fair, provided that no committee members on reconsideration shall have taken part in the original MoDOT determination that the bidder failed to meet the DBE contract goal or make adequate good faith efforts to do so. The bidder and the Administrative Reconsideration Committee may make alternative arrangements which are mutually agreeable for their discussion, in lieu of a meeting in person. Any discussion shall be recorded, so that if necessary, a verbatim transcript can later be made of the discussion, and the identity of the speakers.

(C) The Administrative Reconsideration Committee shall timely decide whether to bidder did or did not meet the DBE contract goal, or if not, whether the low bidder made adequate good faith efforts to do so. If the Administrative Reconsideration Committee finds that either the low bidder met the DBE contract goal, or else the low bidder did make adequate and sufficient good faith efforts to do so, then MoDOT will recommend that this otherwise responsible low bidder should be awarded the contract on its otherwise responsive low bid. If the Administrative Reconsideration Committee does not find that the low bidder met the DBE contract goal, or that the low bidder made adequate and sufficient good faith efforts to do so, then MoDOT will recommend that the bid of this low bidder should be rejected as non-responsive, and that the Commission should award this contract to the next low bidder which has properly met the DBE contract goal or adequately doc-

umented its good faith efforts to do so, in accordance with 49 CFR § 26.53 and Appendix A to 49 CFR Part 26.

(D) The Administrative Reconsideration Committee shall communicate its decision at least verbally or by fax to the bidder in question, prior to the Commission meeting at which this contract shall be awarded. If possible, the Administrative Review Committee will also provide the bidder a written decision on its administrative reconsideration request, explaining the basis for its finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so, before the time of that Commission meeting. But in any event, the Administrative Review Committee will provide the bidder with that written decision, explaining the basis for its finding, as soon as possible after the committee has made its decision.

(E) According to 49 CFR § 26.53(d)(5), the result of such an administrative reconsideration process is not administratively appealable to USDOT.

(4) Termination of a DBE Subcontractor or Other DBE Firm.

(A) A contractor may not terminate, release or replace a DBE subcontractor, manufacturer, supplier or other DBE firm listed in its bid, and then perform the work of that terminated DBE firm with its own forces or those of another firm, without MoDOT's prior written consent. The contractor must provide written documentation to the project Resident Engineer that the DBE firm is unwilling or unable to perform the work, within five working days of the DBE firm's notice to the contractor of its inability to perform the work. The Resident Engineer will forward this written documentation and notice of intent to replace a DBE firm to the External Civil Rights Administrator for approval. If the DBE firm's removal is approved, or a DBE withdraws from the contract work, the contractor must make a good faith effort to find a replacement DBE firm. The contractor must make a good faith effort to replace the entire dollar value of the DBE work which was to be performed, and not merely find a replacement for that work which the original DBE firm was to have performed. If MoDOT finds that the contractor did not make a good faith effort to locate alternative DBEs, the contractor is entitled to administrative reconsideration before the Administrative Reconsideration Committee, as set out in section (3) of this rule above. Again, if the Administrative Reconsideration Committee concurs and finds that the contractor did not make a good faith effort to replace the absent DBE firm with other DBE firms, then the contractor is subject to administrative and contract remedies upon final verification of the actual extent of DBE participation in the contract work.

(B) If one or more substitute DBE firms are approved for the contract work by MoDOT, the prime contractor must provide the Resident Engineer and the External Civil Rights Administrator with copies of new or amended subcontracts for those DBE firms. If the contractor fails or refuses to comply in the time specified with any requirement of this section or 49 CFR § 26.53(f), MoDOT will issue an order stopping all or any part of the payments to the contractor on this project or contract, until satisfactory corrective action has been taken. If the contractor remains in non-compliance with any of these requirements or provisions, MoDOT may terminate the contractor for default of the contract work, or take any other appropriate action.

(5) Sanctions for Failure to Meet DBE Contract Commitments. If MoDOT finds that a contractor or other firm has failed to comply with the DBE requirements of its bid, this rule, or 49 CFR § 26.53, then MoDOT shall have the sole authority and discretion to determine the monetary value extent to which the contract DBE goals have not been met, and MoDOT shall assess damages against the contractor in the full amount of that breach, to satisfy and liquidate the contractor's damages for that contract breach. Additionally, MoDOT may impose any other administrative remedies available at law or provided by the contract in the event of

such a contract breach. And if the failure to comply with the contractual DBE requirements is intentional or fraudulent in any respect, the contractor and any other firms or persons acting with the contractor are subject to suspension or debarment by MoDOT or the United States, or other civil actions or criminal penalties, in accordance with state and federal law, and USDOT regulations.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rule covering this same material is published in this issue of the Missouri Register.

**Title 7—DEPARTMENT OF TRANSPORTATION
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EMERGENCY RULE

7 CSR 10-8.151 Performance of a Commercially Useful Function by a DBE Firm

PURPOSE: This rule describes when a DBE firm performs a commercially useful function, and how MoDOT and USDOT enforce that requirement in the DBE Program.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and this rule must be adopted in order to bring MoDOT's DBE rules into compliance with the federal DBE Program requirements. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of the related emergency rescissions and this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The commission believes this emergency rule to be fair to all interested persons and parties under the circumstances. Emergency Rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

(1) DBE Program Contract Compliance Requirement. Pursuant to 49 CFR § 26.55(c), MoDOT shall count contract expenditures made to a DBE contractor or subcontractor toward the contract's DBE goal only if the DBE firm is performing a "commercially useful function" (CUF) on that contract.

(A) A DBE firm performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising a distinct element of the USDOT-assisted contract work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used by the DBE firm on the contract, for negotiating price, determining quality and quantity, ordering the material, and

installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, MoDOT shall evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and any other relevant factors.

(B) Some of these CUF factors are discussed below in more detail:

1. Management. The DBE firm must manage the work that has been contracted or subcontracted to it. Management includes, but is not limited to, scheduling work operations, ordering equipment and materials, preparing and submitting certified payrolls, and hiring and firing employees. All work must be performed with a workforce the DBE firm controls, with a minimum of thirty (30) percent of the work to be performed by the DBE firm's regular, permanent employees, or those hired by the DBE firm for the project from an independent source other than the prime contractor. The DBE owner(s) must supervise daily operations, either personally or with a full time, skilled and knowledgeable superintendent. The superintendent must be under the DBE owners' direct supervision and control. The DBE owner must make all operational and managerial decisions of the firm. Mere performance of administrative duties is not supervision of daily operations.

2. Materials. The DBE firm shall negotiate the cost, arrange delivery, and pay for the materials and supplies for the project. MoDOT will review invoices to verify billing and payment. The DBE must prepare the estimate, quantity of material, and be responsible for the quality of materials actually installed or used. Two-party checks for payment for materials or supplies may be made to the DBE and the supplier only if that process is specifically approved by MoDOT in advance. No credit toward the DBE goal will be given for the cost of materials or supplies paid directly by the prime contractor for the DBE firm.

3. Employees. In order to be considered an independent business, DBE firms must have and keep a regular workforce. DBE firms cannot "share" employees with non-DBE contractors, and in particular, the prime contractor. DBE firms and the contractors must provide MoDOT with copies of their payrolls, to establish that the firms have separate and independent work forces.

(C) A DBE firm does not perform a commercially useful function (CUF) if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE firm is such an extra participant, MoDOT shall examine similar transactions, particularly those in which DBE firms do not participate.

(3) Presumption that a DBE Firm is Not Performing a Commercially Useful Function (CUF). As provided in 49 CFR § 26.55(c)(3), if a DBE firm does not perform or exercise responsibility for at least thirty (30) percent of the total cost of its contract or subcontract with its own work force, or the DBE subcontracts a greater portion of the work of a contract or subcontract than would be expected on the basis of normal industry practice for the type of work involved, MoDOT shall presume that the DBE is not performing a CUF.

(4) DBE's Evidentiary Presentation to Support A Commercially Useful Function Finding. As provide in 49 CFR § 26.55(c)(4), when MoDOT presumes a DBE is not performing a commercially useful function (CUF) under section (3) of this rule, the DBE firm may present evidence to MoDOT to rebut that presumption. MoDOT shall receive that information on the record, at a hearing recorded verbatim before an independent hearing officer, which hearing is similar in process to those where an existing DBE firm's eligibility is being removed, under rule 7 CSR 10-8.091. The DBE firm shall have the burden of proving, in such

an evidentiary hearing on the record, that the DBE firm is performing or did perform a commercially useful function, given the type of work involved and normal industry practices. If the independent hearing officer rules in favor of the DBE firm in whole or in part, then the MoDOT sanctions or remedies for the apparent breach of the contract shall be reduced or eliminated to that extent. If the independent hearing officer finds that the DBE firm did fail to carry its burden and show that it did perform a commercially useful function, considering the type of work involved and normal industry practices, then MoDOT shall impose sanctions or contract remedies accordingly.

(5) Contractor's Evidentiary Presentation to Support a DBE's Performance of a Commercially Useful Function. Likewise, when MoDOT determines a DBE firm is not performing or has not performed a CUF and proposes to disallow or reduce the amount of the contract payments to the contractor involved, or assess liquidated damages against the contractor for its failure to meet its agreed-upon DBE contract goal, MoDOT shall first allow the contractor (and the DBE firm if appropriate) to present evidence to MoDOT to rebut that presumption. MoDOT shall receive that information on the record, at a hearing recorded verbatim before an independent hearing officer, which hearing is similar in process to those where an existing DBE firm's eligibility is being removed, under rule 7 CSR 10-8.091. The contractor and DBE firm shall have the burden of proving, in such an evidentiary hearing on the record, that the DBE firm is performing or did perform a commercially useful function, given the type of work involved and normal industry practices. If the independent hearing officer rules in favor of the contractor (and DBE firm) in whole or in part, then the MoDOT sanctions or remedies for the apparent breach of the contract shall be reduced or eliminated to that extent. If the independent hearing officer finds that the contractor (and DBE firm) failed to carry their burden and show that the DBE firm did perform a commercially useful function, considering the type of work involved and normal industry practices, then MoDOT shall impose sanctions or contract remedies accordingly.

(6) Review of CUF Determinations by Agencies of USDOT. As provided in 49 CFR § 26.55(c)(5), MoDOT's decision on whether a commercially useful function (CUF) has been performed and the related matters is subject to review by the applicable USDOT operating administration, but these decisions are not administratively appealable to USDOT. It is MoDOT's position that a MoDOT decision on whether a CUF has been performed is not a final action, and so is not subject to judicial review in Missouri courts under Chapter 536 RSMo, at least until after the applicable USDOT operating administration (FHWA, FAA or FTA) has been requested to administratively review that MoDOT decision. At that time, the action (or non-action) of the USDOT operating administration may become the determination which is judicially reviewable, but a federal agency's determination is not reviewable in the state courts of Missouri.

(7) Contract and Other Sanctions for Failure to Perform a Commercially Useful Function. The failure of a DBE firm to perform a commercially useful function (CUF) will result in the dollar value of that DBE firm's work not being credited toward the contractor's DBE goal for that contract. This can, and usually will, result in MoDOT withholding payment from the prime contractor of that entire amount which is not credited, if this results in the contractor's failure to achieve the DBE participation goal for that contract. Deliberate conduct or indifference to the CUF requirements can also lead to the DBE firm's removal of eligibility under the procedures of 7 CSR 10-8.091. In any and all cases of deliberate attempts by the contractor, a DBE firm, or other firms to circumvent the requirements of the USDOT or MoDOT DBE Program, or their related contract requirements, or fraud of any

kind, these actions may lead to suspension or debarment of the firms and their affiliates by MoDOT and/or the United States, and may result in criminal prosecution and sanctions, plus civil and contractual liability, of any firm or person involved.

(8) The Obligation of the Contractor and the DBE Firm. It is the obligation of each contractor and DBE firm, prior to submitting a bid on a MoDOT contract, to inquire and understand the DBE Program requirements generally, and specifically the DBE's obligation to perform a commercially useful function, and how to value a DBE firm's work for bidding and contract goal satisfaction purposes. Further, it is the contractor's obligation to make sure that a DBE firm on a project performs a commercially useful function on that federally-assisted contract, in accordance with the contractor's approved bid and contract terms. MoDOT and USDOT have no duty or other obligation to first warn or advise a contractor or DBE firm of a failure to comply with the program requirements, before MoDOT or USDOT take administrative, civil or other actions as a result. If a contractor or DBE firm has any questions or concerns in this regard, they may contact the MoDOT External Civil Rights Unit, USDOT, or the appropriate FHWA, FTA or FAA office nearby. As with other legal requirements, ignorance of the DBE Program obligations is no excuse or justification for a contractor or DBE firm's non-compliance with their contractual and program obligations.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rule covering this same material is published in this issue of the Missouri Register.

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EMERGENCY RULE

7 CSR 10-8.161 Confidentiality of DBE Program Financial and Other Information

PURPOSE: This rule complies with the USDOT requirements of 49 CFR Part 26 on the confidentiality of financial and other confidential information submitted to MoDOT in and for the DBE Program.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's Adarand v. Pena opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and this rule must be adopted in order to bring MoDOT's DBE rules into compliance with the federal DBE Program requirements. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of the related emergency rescissions and this emergency rule is limit-

ed to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The commission believes this emergency rule to be fair to all interested persons and parties under the circumstances. Emergency Rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

(1) Personal Financial Information Provided for DBE Program Purposes. In compliance with 49 CFR § 26.67(a)(2)(ii), and notwithstanding any provision of state law, MoDOT shall not release an individual's personal net worth statement nor any related documentation concerning or supporting it to any third party without the written consent of the individual who provided or is the subject of that information. Provided, however, that MoDOT shall transmit this information to USDOT for any certification appeal proceeding held under 49 CFR § 26.89 in which the disadvantaged status of that individual is in question.

(2) Confidential Business Information. In compliance with 49 CFR § 26.109(a)(2), MoDOT shall safeguard from disclosure to unauthorized persons any information that may reasonably be considered as confidential business information, consistent with federal and state law. If MoDOT believes that under state law, a third party which has submitted a written request for it is entitled to receive DBE Program information or documentation which the firm or its owners may deem to be confidential business information, MoDOT may notify the firm and its owners a sufficient amount of time in advance of the information release, of the third party's request for information, including information on the identity and address of the third party, so that the firm or its owners may take any legal action they deem appropriate to protect and preserve the confidentiality of that DBE Program information or documentation against disclosure. MoDOT and the Commission also reserve the right and discretionary authority to take legal or judicial action to prevent disclosure of confidential business or personal information acquired in or for the DBE Program, consistent with federal and state law, as MoDOT and the Commission deem appropriate in the circumstances.

(3) Investigative Information. MoDOT's External Civil Right Unit regularly conducts investigations in anticipation of legal actions, causes of action or litigation, including but not limited to information on whether a firm should be DBE certified or recertified, whether a firm's eligibility as a DBE should be removed, whether a bidder made a good faith effort in its bid, whether a DBE firm subcontractor has performed a commercially useful function, or properly performed all the work it was obligated to under a federally-assisted contract. These investigations, in turn, may be prepared for and provided confidentially to state or federal USDOT or other law enforcement agencies, for civil or criminal prosecution; or may be used by MoDOT and the Commission to support a contract disallowance or breach of contract action. These investigative files in MoDOT's possession are confidential and shall not be produced or disclosed while the investigation is in progress, consistent with federal and state law. If action is taken upon the record developed under this chapter, under 49 CFR Part 26, or under other provisions of state or federal civil, criminal or administrative law, then the pertinent portions or all of that investigative record shall be disclosed to the necessary parties, if and to the extent required of MoDOT by applicable federal or state law.

(4) Other Confidential Information. As required by state and federal law, in producing any DBE Program documents or records, MoDOT shall not disclose to a third party any individual's Social Security number or firm's Employer Identification number. Further, unless a confidential complainant agrees in writing to the release of his or her identity, or the release of information or documentation which will actually or effectually identify that individ-

ual, MoDOT shall comply with the mandates of 49 CFR § 26.109(b) and maintain the confidentiality of the identity of every complainant in the DBE Program. If there is any other valid and lawful basis under state or applicable federal law available to preserve the confidentiality of DBE Program information, MoDOT may use and rely upon that legal basis to avoid disclosure of any information MoDOT perceives to be confidential.

(5) Compliance With Lawful Court Order. MoDOT will comply with a lawful order of any court having proper jurisdiction over the Commission, MoDOT or their employees, regarding the release (or not) of any DBE Program documentation or information; subject to the inherent right of the Commission to appeal, seek a writ or seek other judicial relief. In any such legal proceeding to compel disclosure of DBE Program information, MoDOT and the Commission may notify and afford the entity which provided or is the subject of the information, and USDOT or its appropriate operating administration, with the opportunity to participate in the action, and to remove it to federal court or take such other judicial action as each of them deems appropriate.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101 (b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rule covering this same material is published in this issue of the Missouri Register.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RESCISSION

7 CSR 10-8.200 Disadvantaged Business Enterprise Set-Aside Program General Information. This rule provided general information on the Missouri Highways and Transportation Commission's Disadvantaged Business Enterprise Set-Aside Program.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's Adarand v. Pena opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety

and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri and United States Constitutions*. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 *Code of Federal Regulations* part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rescission covering this same material is published in this issue of the *Missouri Register*.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RESCISSION

7 CSR 10-8.210 Definitions. This rule defined terms applicable to the disadvantaged business enterprise set-aside program.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 *Code of Federal Regulations* (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 *Code of Federal Regulations*, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri and United States Constitutions*. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 *Code of Federal Regulations* part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rescission covering this same material is published in this issue of the *Missouri Register*.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RESCISSION

7 CSR 10-8.220 Eligibility for Participation in the Commission's DBE Set-Aside Program. This rule described which DBE firms and joint ventures are eligible to be qualified as participants in the commission's DBE set-aside program, and described the procedures which must be followed to become a qualified DBE.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 *Code of Federal Regulations* (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 *Code of Federal Regulations*, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri and United States Constitutions*. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 *Code of Federal Regulations* part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rescission covering this same material is published in this issue of the *Missouri Register*.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RESCISSION

7 CSR 10-8.230 Publication of Qualified DBEs and Joint Ventures in the DBE Directory. This rule described how the department would publish the list of qualified DBEs and joint ventures in its DBE directory.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri* and *United States Constitutions*. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rescission covering this same material is published in this issue of the *Missouri Register*.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RESCISSION

7 CSR 10-8.240 Retaining Qualification to Participate in the Commission's DBE Set-Aside Program. This rule described how a qualified DBE or joint venture retains its qualification to participate in this set-aside program, and when a qualified DBE or joint venture graduated from this program.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were

adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri* and *United States Constitutions*. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rescission covering this same material is published in this issue of the *Missouri Register*.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RESCISSION

7 CSR 10-8.250 Bidding Limitations on Qualified Firms and Joint Ventures Having Active Commission DBE Set-Aside Contracts. This rule set limits on the number of active DBE set-aside program contracts which a qualified firm or joint venture may have from the commission, in order to achieve greater participation and involvement in the program.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 Code of Federal Regulations, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies

with the protections extended by the *Missouri and United States Constitutions*. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 *Code of Federal Regulations* part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rescission covering this same material is published in this issue of the *Missouri Register*.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RESCISSION

7 CSR 10-8.260 DBE Subcontracting Goals for the Commission's DBE Set-Aside Program Contracts. This rule described the program requirement, that a qualified firm or joint venture in the DBE set-aside program must itself subcontract a certain given percentage of its set-aside contract work to other certified DBE firms or joint ventures.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 *Code of Federal Regulations* (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 *Code of Federal Regulations*, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri and United States Constitutions*. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 *Code of Federal Regulations* part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000,

expires Nov. 6, 2000. A proposed rescission covering this same material is published in this issue of the *Missouri Register*.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

EMERGENCY RESCISSION

7 CSR 10-8.270 Disqualification of a Firm or Joint Venture from the DBE Set-Aside Program. This rule described who is responsible for the disqualification of a firm or joint venture from the DBE set-aside program, the effect on pending contracts of that disqualification, and the extent to which any administrative appeals of that decision were available.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 *Code of Federal Regulations* (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

EMERGENCY STATEMENT: Effective March 4, 1999, the United States Department of Transportation adopted new Disadvantaged Business Enterprise (DBE) Program regulations, Title 49 *Code of Federal Regulations*, part 26. These new federal regulations were adopted in order to comply with the U.S. Supreme Court's *Adarand v. Peña* opinion. The prior Missouri Department of Transportation (MoDOT) regulations in this chapter do not comply with the new federal regulations and are not enforceable to the extent they are inconsistent with 49 CFR part 26, thus, jeopardizing MoDOT's federal-aid highway funding. Therefore, the prior rules must be rescinded and new rules adopted. The commission finds that the risk of jeopardizing or losing federal-aid highway funding creates an immediate danger to the public health, safety and welfare. The scope of this emergency rescission and the related new rules are limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri and United States Constitutions*. The commission believes this emergency rescission to be fair to all interested persons and parties under the circumstances. Emergency Rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and title 49 *Code of Federal Regulations* part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. A proposed rescission covering this same material is published in this issue of the *Missouri Register*.

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rule-making process. The law provides that for every proposed rule, amendment or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least 30 days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than 30 days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the 90-day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than 30 days from the date of publication of the new notice.

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 200—State Board of Nursing Chapter 4—General Rules

PROPOSED AMENDMENT

4 CSR 200-4.020 Requirements for Licensure. The board is proposing to amend paragraph (1)(C)3. and sections (7) and (9) and delete the forms following this rule in the *Code of State Regulations*.

PURPOSE: This proposed amendment defines the required score on the computer-based Test of English as a Foreign Language (TOEFL) examination.

(1) Examination.

(C) The candidate shall make written application to the Missouri State Board of Nursing for permission to be admitted to the licensing examination for professional/practical nurses. Application forms for the licensing examination shall be obtained from the Missouri State Board of Nursing.

1. A request for forms shall be made by the director of the program of professional/ practical nursing and should include the names and completion dates of candidates who expect to apply for admission to the examination.

2. Application forms for out-of-state/country graduates may be obtained by writing the State Board of Nursing, giving name, address, name and address of school of nursing and completion date.

3. Any applicant applying for the practical nurse licensing examination who is deficient in theory, clinical experience, or both, as stated in the *Minimum Standards for Accredited Programs of Practical Nursing*, **which is incorporated herein by reference**, and has not earned a practical nursing degree or met the requirements for a comparable period of training as determined by the board (4 CSR 200-4.020(1)(B)), will not be approved.

(7) Canadian Nurses' Association Testing Service (CNATS). The Missouri State Board of Nursing recognizes the English Language Administration of the CNATS Examination and nurses who have successfully passed this examination shall be granted RN licensure by endorsement providing they meet the minimal educational requirements in Missouri in effect at the time of original licensure. Applicants for licensure by endorsement who have been licensed in Canada on the basis of a passing score on the French Language Administration of the CNATS Examination will be required to demonstrate proficiency in the English language by meeting one (1) of the following criteria:

(A) Completion of an accredited nursing program or its equivalent in the United States;

(B) A minimum score of fifty (50) in each section of the **paper-based Test of English as a Foreign Language (TOEFL) Examination**;

(C) **A minimum score of sixteen (16) in the Computer-Based Listening, eighteen (18) in the Computer-Based Structure/Writing, and fifteen (15) in the Computer-Based Reading section of the Computer-Based Test of English as a Foreign Language (TOEFL) Examination**;

[(C)] (D) Completion of a nursing program given in English in another country;

[(D)] (E) A passing score on a nursing licensure examination which is given in English;

[(E)] (F) A certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS); or

[(F)] (G) Any method of proof previously accepted by the Missouri State Board of Nursing.

(9) Intercountry Licensure by Examination in Missouri—RN and LPN.

(A) Application Procedure.

1. A professional/practical nurse licensed outside of the United States or Canada shall be entitled to apply to take the examination for licensure if, in the opinion of the Missouri State Board of Nursing, current requirements for licensure in Missouri are met.

2. An applicant must request, in writing, an Application for Professional/Practical Nurse Licensure by Examination. The request shall include the applicant's full name, current mailing address and country of original licensure. The application shall be properly executed by the applicant in black ink and shall be included in the documents submitted to the Missouri State Board of

Nursing for evaluation with the required credentials. All original documents shall be returned to the applicant. Credentials in a foreign language shall be translated into English, the translation shall be signed by the translator and the signature shall be notarized by a notary public. The translation shall be attached to the credentials in a foreign language when submitted to the Missouri State Board of Nursing.

3. The required credentials for practical nurse applicants are—

A. A course-by-course evaluation report received directly from a foreign credentials evaluation service approved by the board;

B. A photostatic copy of birth certificate (if a copy of birth certificate is not available, copy of baptismal certificate, passport or notarized statement from an authorized agency will be accepted as verification of name, date of birth and place of birth);

C. Photostatic copy of marriage license/certificate (if applicable);

D. TOEFL certificate indicating successful completion of examination. Foreign practical nurse applicants from non-English speaking countries or from English speaking countries with different native language shall be required to take the TOEFL and attain a minimum score of fifty (50) in each section of the **paper-based examination OR a minimum score of sixteen (16) in the Computer-Based Listening, eighteen (18) in the Computer-Based Structure/Writing, and 15 in the Computer-Based Reading section of the Computer-Based Test of English as a Foreign Language (TOEFL) Examination.** When the applicant achieves *[a score of fifty (50)]* a passing score (as defined above) in each section of the test, the board of nursing will not address itself to that section should there be a required repeat of the examination for other sections;

E. Test of Spoken English (TSE®) Certificate indicating that the applicant has obtained a minimum overall score of forty-five (45)/.;

F. The certification of licensure form from the licensing agency where the original registration by examination was secured;

G. Photostatic copy of original license issued by the licensing agency where original licensure/registration was secured by examination; and

H. The completed application must be accompanied by one (1) two-inch by two-inch (2" × 2") portrait/photograph of the applicant, two (2) sets of his/her fingerprints, the fingerprinting fee as charged by the Missouri State Highway Patrol and Federal Bureau of Investigation and the required application fee. All fees are nonrefundable.

4. The required credentials for professional nurse applicants are—

A. Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate. The CGFNS agency must forward the certificate to our office. This certification must signify a passing grade on the CGFNS English language and nursing practice proficiency examination as evidence of meeting similar qualifications of graduates of nursing programs in Missouri for the purpose of qualifying for admission to the licensure examination/./;

B. A photostatic copy of birth certificate (if a copy of birth certificate is not available, a copy of baptismal certificate, passport or notarized statement from authorized agency will be accepted as verification of name, date of birth and place of birth);

C. Photostatic copy of original license or certificate issued by the licensing agency where original licensure/registration was secured by examination;

D. Photostatic copy of marriage license/certificate (if applicable);

E. The certificate of licensure form from the licensing agency where the original registration/licensure by examination was secured; and

F. The completed examination application with the required examination fee, one (1) two-inch by two-inch (2" × 2") portrait/photograph of the applicant, two (2) sets of his/her fingerprints, the fingerprinting fee as charged by the Missouri State Highway Patrol and Federal Bureau of Investigation and all the credentials shall be submitted to the Missouri State Board of Nursing.

AUTHORITY: sections 335.036(2) and (7), 335.046, [RSMo Supp. 1997] and 335.051, RSMo [1994] Supp. 1999. Original rule filed Oct. 14, 1981, effective Jan. 14, 1982. For intervening history, please consult the **Code of State Regulations**. Amended: Filed May 12, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Nursing, Calvina Thomas, Executive Director, P.O. Box 656, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

PROPOSED RESCISSION

7 CSR 10-8.010 General Information. This rule provided general information for implementation of Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 and Title 49 *Code of Federal Regulations* part 23.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 *Code of Federal Regulations* (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the International Surface Transportation Efficiency Act of 1991, and Title 49 *Code of Federal Regulations* part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be

considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RULE

7 CSR 10-8.011 Definitions

PURPOSE: This rule defines terms applicable to the Disadvantaged Business Enterprise (DBE) Program established by the Missouri Department of Transportation (MoDOT) in this chapter, in accordance with Title 49 Code of Federal Regulations part 26, section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113, and in accordance with MoDOT's approved DBE Program submittals to the U.S. Department of Transportation (USDOT).

(1) The following words and phrases have the same meaning and definition in Missouri Department of Transportation's (MoDOT's) Disadvantaged Business Enterprise (DBE) Program as they have been given by United State Department of Transportation (USDOT) in Title 49 CFR section 26.5: "Affiliation"; "Alaska native"; "Alaska Native Corporation" or "ANC"; "immediate family member"; "Indian tribe"; "joint venture"; "native Hawaiian"; "Native Hawaiian Organization"; "personal net worth"; "primary industry classification"; "principal place of business"; "set-aside"; "Small Business Administration"; "tribally-owned concern."

(2) The following words and phrases have the meaning and definition stated below, exclusively for the purpose of administering and regulating the DBE Program established by MoDOT in this chapter:

(A) "CFR" means the *Code of Federal Regulations*, published by the Office of the Federal Register, National Archives and Records Administration, through the U.S. Government Printing Office, Superintendent of Documents, Washington, D.C. 20402-9328;

(B) "Commission" means the Missouri Highways and Transportation Commission, a state agency created by statute and vested with authority by Article IV, Section 29, *Missouri Constitution*;

(C) "Compliance" when used with respect to MoDOT or another USDOT recipient, means that recipient has correctly implemented the requirements of 49 CFR part 26. When used regarding a contractor, subcontractor or supplier on a USDOT-assisted commission contract with funding authority described in 49 CFR section 26.3 (or successor funding thereto), "compliance" means that contractor, subcontractor or supplier has correctly implemented the requirements of this chapter, the relevant DBE Program provisions of the commission contract, and 49 CFR part 26;

(D) "Contract" means a legally binding relationship obligating a seller (including but not limited to a contractor, subcontractor or supplier) to furnish supplies or services (including but not limited to construction and professional services) and the buyer to pay for them. For the purposes of this chapter, either a lease or a sub-contract is considered to be a contract;

(E) "Contractor" means a person or firm which receives a contract directly from the commission or another USDOT recipient in a USDOT-assisted highway, transit or airport program, to perform

construction (of all types including maintenance and repair) work, project design, design-build, or other professional services;

(F) "CSR" means the *Code of State Regulations* for the state of Missouri, published by the secretary of state of Missouri;

(G) "DBE" means a disadvantaged business enterprise;

(H) "Department" means the Missouri Department of Transportation or "MoDOT," a constitutional state department answerable and subordinate to the commission within the executive branch of Missouri government, which entity is also described in Missouri law as the Missouri Highways and Transportation Department; unless the context and usage of the term clearly indicates that it is referring to the United States Department of Transportation or "USDOT";

(I) "Disadvantaged business enterprise" means a for-profit small business concern—

1. That is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation or other business entity, in which fifty-one percent (51%) of the stock or shares are owned by one or more socially and economically disadvantaged individuals; and

2. Whose management and daily business operations are controlled by one or more of those socially and economically disadvantaged individuals who own it;

(J) "FAA" means the Federal Aviation Administration within USDOT, including its administrator and his or her designees;

(K) "FHWA" means the Federal Highway Administration within USDOT, including its administrator and his or her designees;

(L) "FTA" means the Federal Transit Administration within USDOT, including its administrator and his or her designees;

(M) "MoDOT" means the Missouri Department of Transportation, which is also described in Missouri law as the Missouri Highways and Transportation Department;

(N) "Noncompliance" when used with respect to MoDOT or another USDOT recipient, means that recipient has not correctly implemented the requirements of 49 CFR part 26. When used regarding a contractor, subcontractor or supplier on a USDOT-assisted commission contract with funding authority described in 49 CFR section 26.3 (or successor funding thereto), "compliance" means that contractor, subcontractor or supplier has not correctly implemented either the requirements of this chapter, or the relevant DBE Program provisions of the commission contract, or 49 CFR part 26, or a combination of those legal requirements;

(O) "Race- and gender-conscious" measure or program is one that is focused specifically on assisting only businesses owned and controlled by members of certain racial groups and/or the feminine gender, such as businesses which qualify for DBE Program certification under USDOT's definition of a "socially and economically disadvantaged individual" at 49 CFR section 26.5, using a rebuttable presumption to classify persons as "disadvantaged" or not based upon their race, national origin or ancestry, or female gender;

(P) "Race- and gender-neutral" measure or program is one that is, or can be, used to assist all small businesses, regardless of the race, national origin or ancestry, or gender, of the persons who own and control those businesses;

(Q) "Recipient" is any entity, public or private, to which USDOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA; or else it is an entity that has applied for such assistance. MoDOT is usually a "primary recipient" of USDOT financial assistance, but then MoDOT may pass some of that funding through to other recipients. A person or firm which is providing construction, design or other professional services, or materials, supplies or equipment, for a recipient's USDOT-assisted project as a contractor, subcontractor or supplier, is not a "recipient" for the purposes of this chapter;

(R) "Small business concern," with respect to firms seeking to participate as DBEs in USDOT-assisted contracts, means a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121), that also does not exceed the cap on average annual gross receipts specified in 49 CFR section 26.65(b);

(S) "Socially and economically disadvantaged individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis;

2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

A. "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

B. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

C. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or native Hawaiians;

D. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Figi, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

E. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

F. Women;

G. Any additional groups whose members are designated as socially and economically disadvantaged by the U.S. Small Business Administration (SBA), at such time as the SBA designation becomes effective;

3. Provided, however, that no individual can qualify as "economically disadvantaged" or be considered "socially and economically disadvantaged" if his or her personal net worth (computed as directed under 49 CFR part 26 and its Appendix E) exceeds the maximum amount specified in 49 CFR section 26.67(b) and (d), as that amount may be adjusted by USDOT;

(T) "Subcontractor" means a person or firm which does not receive a contract directly from the commission or another USDOT recipient in a USDOT-assisted highway, transit or airport program, but instead contracts with a contractor or subcontractor in that program, to perform construction (of any type including maintenance and repair) work, project design, design-build, or other professional services, to help complete a USDOT-assisted highway, transit or airport project;

(U) "Supplier" means a person or firm which provides exclusively materials, supplies or equipment, but not construction, design, or other professional services, by contract with the commission or another USDOT recipient, or with a contractor or a subcontractor;

(V) "TEA-21" means the federal Transportation Equity Act for the 21st Century, Public Law 105-178, 112 Stat. 107 et seq., and any of its sections or provisions;

(W) "USDOT" refers to the U.S. Department of Transportation, including the secretary of transportation, the office of the secretary, the FHWA, the FTA and the FAA, or any one of these administrative units of the U.S. Department of Transportation;

(X) "USDOT-assisted contract" means any contract between the commission (or other USDOT recipient) and a contractor or sup-

plier funded in whole or in part with USDOT financial assistance. This term also includes lower tier contracts between the contractor and a subcontractor or a supplier, or between a subcontractor and a supplier, for any services or supplies needed to perform the contract work which is being funded in whole or in part with USDOT financial assistance.

(3) Throughout this chapter, the term "firm" shall be used to refer to any private legal person or business entity which may lawfully exist under the laws of Missouri or its state of creation, and which may contract to perform any services, or to provide or sell any materials or supplies. The term "firm" shall be deemed to include (but not be limited to) an individual, corporation, partnership, limited partnership, joint venture, limited liability company, or a professional corporation. However, the term "firm" shall not include any "not-for-profit" corporation or other "not-for-profit" entity, and shall not include any public governmental entity. Furthermore, the firm and any fictitious name used by the firm must, to the extent required by Missouri law, be properly registered to do business in Missouri with the Missouri Secretary of State and the Missouri Department of Revenue, before that firm may perform work or sell materials or supplies in Missouri as a contractor, subcontractor, supplier, or any DBE firm recognized by MoDOT.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

PROPOSED RESCISSION

7 CSR 10-8.020 Definitions. This rule defined terms applicable to the Disadvantaged Business Enterprise Program.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

AUTHORITY: section 226.020 and 226.150, RSMo 1994, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency amendment filed Feb. 15, 1996, effective Feb. 25, 1996, expired Aug. 22, 1996. Amended: Filed Feb. 15, 1996, effective Aug. 30, 1996. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RULE

7 CSR 10-8.021 General Information

PURPOSE: This rule provides general information regarding MoDOT's implementation of the DBE Program requirements of Title 49 Code of Federal Regulations part 26 in USDOT-assisted programs and contracts.

PUBLISHER'S NOTE: The publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the full text of that material will be made available to any interested person at both the Office of the Secretary of State and the office of the adopting agency, pursuant to section 536.031.4, RSMo. Such material will be provided at the cost established by state law.

(1) United States Department Transportation (USDOT)-Required Disadvantaged Business Enterprise (DBE) Program. The Missouri Highways and Transportation Commission, through Missouri Department of Transportation (MoDOT), has been and is the recipient of federal-aid highway funds, federal transit funds, and airport funds, as described in 49 CFR section 26.3. Some of these funds the commission, through MoDOT, expends directly by awarding a contract for design, construction or other professional services, or supplies, to a contractor or supplier. Some of these federal funds the commission, through MoDOT, transfers to other recipients, for them to expend through appropriate contracts. In accordance with 49 CFR section 26.3 and the provisions of various federal laws such as Transportation Equity Act for the 21st Century (TEA)-21 which it implements and enforces, the provisions of Title 49 CFR part 26 are applicable to the commission, MoDOT, and all other recipients of USDOT financial assistance through MoDOT; as well as to the contractors, subcontractors and suppliers which receive USDOT-assisted contracts from the commission and all other recipients of USDOT financial assistance through MoDOT, from the funding sources described in 49 CFR

section 26.3 (or their successor sources). The commission, MoDOT, all other recipients of such funds through MoDOT, and their contractors, subcontractors and suppliers on USDOT-assisted contracts, are bound by the provisions of Title 49 CFR part 26; and they are also bound by the commission's DBE Program regulations in this chapter. Some recipients of USDOT funding through MoDOT, including those described in 49 CFR section 26.21, may be required by such federal regulations to have their own DBE Program. Those recipients of USDOT funding through MoDOT are required to comply with the applicable provisions of this chapter, and to develop other portions of their own DBE program in cooperation with and under the supervision of the USDOT.

(2) MoDOT's DBE Program Policy Statement. MoDOT has developed and filed with USDOT its signed and dated "Policy Statement" pursuant to 49 CFR section 26.23, stating MoDOT's commitment to the DBE Program, as follows:

The Missouri Department of Transportation (MoDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. MoDOT has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, MoDOT has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy and commitment of MoDOT that disadvantaged businesses, as defined in 49 CFR Part 26, shall have a level playing field to participate in the performance of contracts financed in whole or part with federal funds. It is also the policy of MoDOT to:

- A. Ensure nondiscrimination in the award and administration of USDOT assisted contracts;
- B. Create a level playing field on which DBE firms can compete fairly for USDOT assisted contracts;
- C. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- D. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE firms;
- E. Assist in the removal of barriers to the participation of DBE firms in USDOT assisted contracts; and
- F. Assist in the development of firms to enhance the ability to compete successfully in the market place outside the DBE Program.

The External Civil Rights Administrator has been designated as the DBE Liaison Officer. In that capacity, the administrator is responsible for the implementation of all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the MoDOT in its financial assistance agreements with the USDOT.

MoDOT will advise each contractor, through contract specifications, that failure to carry out these requirements shall constitute a breach of contract and may result in termination of the contract, or any such remedy that MoDOT deems appropriate. MoDOT will require all employees and agents to adhere to the provisions of 49 CFR Part 26.

MoDOT shall annually submit to the Federal Highway Administration (FHWA) overall goals for the participation of DBE firms for a one year period of time. The goal shall be analyzed, and adjusted if necessary, at the end of each federal fiscal year.

/s/ Henry Hungerbeeler, Director Dated September 30, 1999

(3) DBE Program Applicable Only to USDOT-Assisted Contract Work. In accordance with 49 CFR section 26.3(d) and other provisions of federal law, the USDOT DBE Program at 49 CFR part 26, and the commission's DBE Program regulations in this chapter,

only apply to USDOT-assisted contracts awarded by USDOT funding recipients. If the commission or a recipient is bidding or awarding a contract which involves no USDOT funding, and which will be paid or financed entirely with state or local funding, or other federal funding not covered by DBE Program requirements, then 49 CFR part 26 and the commission's DBE Program regulations in this chapter do not apply to such contract work. Although the commission and MoDOT are implementing race- and gender-neutral measures and programs to assist small businesses as they are able to, the commission and MoDOT have no DBE Program applicable to contract work which is entirely state-funded or state and local-funded, and the provisions of this chapter do not apply to such state-funded or state and local-funded contract work. Any commission "Request for Bid" will clearly indicate whether an included project is a federal project or not, and if so, it will contain information on the DBE contract goal, if any. Any recipient of USDOT funding specified in 49 CFR section 26.3 through MoDOT must provide the same information in its bidding documents.

(4) The Administration of the Commission's DBE Program. The Missouri Highways and Transportation Commission has adopted these DBE Program regulations for MoDOT, which executive branch department of state government is subordinate to and controlled by the commission through the commission's appointee, the MoDOT director, who is MoDOT's chief executive officer. The administration of the DBE Program within MoDOT has been assigned to the external civil rights administrator, who has been designated as MoDOT's DBE liaison officer in compliance with 49 CFR section 26.25. The external civil rights administrator supervises the External Civil Rights Unit, and reports directly to MoDOT's inspector general, who is in turn, supervised by the MoDOT director. However, the external civil rights administrator retains direct and independent access to MoDOT's director, chief engineer, and all other members of the director's staff, concerning all DBE Program matters. As the DBE liaison officer, MoDOT's external civil rights administrator develops, manages, and administers the DBE Program, including defining processes, procedures, and operational policies, and is responsible for implementing all aspects of MoDOT's DBE Program. The external civil rights administrator directs and controls the staff of the External Civil Rights Unit, and receives assistance as necessary from the inspector general, other MoDOT staff and commission legal counsel, and occasionally from commission-retained consultants and contractors, so that MoDOT has adequate staff to administer this DBE Program in compliance with 49 CFR part 26. The external civil rights administrator works closely with the commission's chief counsel's office to review DBE policies and contract provisions periodically, to ensure that they conform to state and federal law; and reviews program administration issues with the commission attorneys assigned DBE program responsibilities.

(5) Duties of the External Civil Rights Administrator. The external civil rights administrator performs the following duties and responsibilities, either directly and personally, or through the staff of the External Civil Rights Unit:

(A) Setting and approving DBE contract goals on federal aid construction projects, including projects administered by local public agencies, aviation and transit authorities, or any other recipient receiving USDOT assistance through MoDOT;

(B) Monitoring the DBE contract goals to verify contractor compliance at the time of the bid, when the contract is awarded, during project construction, and at the time of project acceptance;

(C) With the assistance of MoDOT field staff plus other contractors and subcontractors, monitoring DBE performance to determine that the DBE firm has performed a commercially useful function, and has otherwise complied with the requirements of 49 CFR part 26 in that contract work;

(D) Overseeing all support services provided to certified DBEs by MoDOT;

(E) Gathering and reporting statistical data and other information as required by USDOT;

(F) Reviewing third party contracts and purchase requisitions for DBE Program compliance;

(G) Working with MoDOT management, business units and staff to set the annual DBE Program goal, as well as individual project or contract goals;

(H) Ensuring that bid notices and bidding documents are made available to DBE firms in a timely manner;

(I) Identifying USDOT-assisted contracts and procurement, to include DBE contract goals (factoring in both race- and gender-neutral contracting methods as well as contract goals preferential to DBE firms) in bid solicitations, and monitoring the results of those bids;

(J) Analyzing MoDOT's progress toward annual DBE Program goal attainment, and identifying various race- and gender-neutral or other ways to achieve the annual DBE Program goal;

(K) Participating in pre-bid meetings;

(L) Advising the commission and MoDOT's director on DBE Program matters and the achievement of MoDOT and USDOT program requirements;

(M) Providing DBE firms with information and assistance in preparing bids, and obtaining bonding and insurance;

(N) Planning and participating in DBE training seminars;

(O) Providing outreach to DBEs and community organizations to advise of training, contracting and other business opportunities available;

(P) Maintaining the MoDOT DBE Directory, its addenda and updates;

(Q) Performing any other functions and duties necessary or appropriate to administer and enforce the provisions of 49 CFR part 26 and this chapter in Missouri.

(6) Contacting MoDOT's DBE Liaison Officer. MoDOT's external civil rights administrator is MoDOT's DBE liaison officer. MoDOT's DBE liaison officer may be contacted in writing or by telephone as follows:

External Civil Rights Administrator
Missouri Department of Transportation
105 West Capitol Avenue, P.O. Box 270
Jefferson City, MO 65102-0270

Fax Number: (573) 526-5640

Telephone Number: 1-888-ASK MODOT (1-888-275-6636)

E-Mail: taeges@mail.modot.state.mo.us

(7) DBE Directory. MoDOT publishes a directory annually, with monthly updates, identifying certified DBE firms willing to perform as subcontractors on MoDOT's USDOT-assisted projects. Copies of the directory are mailed annually to all contractors authorized to do business with MoDOT, DBE firms, DBE organizations, contractor organizations, local public agencies, MoDOT district offices, and any other entity requesting copies. Monthly addenda (showing DBE firm additions and deletions, and other certification changes) are mailed to all firms and entities receiving notices of bid openings, and to plan holders, DBE firms, DBE organizations, contractor organizations, local public agencies, MoDOT district offices, and any other entity requesting copies. The firms contained in the DBE Directory and its addenda are certified as meeting the certification eligibility requirements of 49 CFR part 26 and this chapter, unless the addenda specifically lists the firm as not certified any longer. The directory contains each DBE firm name, address, phone, fax, socially and economically disadvantaged owner's name, the work categories in which the firm may perform DBE certified contract work, and the geographic work area in

Missouri preferred by the DBE firm. MoDOT has made the DBE Directory available electronically to all MoDOT district offices, and to the public on the Internet. Paper copies of the DBE Directory are available by contacting MoDOT's DBE liaison officer or staff members in writing or by telephone as follows:

External Civil Rights Administrator
Missouri Department of Transportation
105 West Capitol Avenue, P.O. Box 270
Jefferson City, MO 65102-0270

Fax Number: (573) 526-5640
Telephone Number: 1-888-ASK MODOT (1-888-275-6636)
E-Mail: temmek@mail.modot.state.mo.us

(8) MoDOT's Non-Discrimination Policy. MoDOT will not exclude any person from participating in, deny any person the benefits of, or otherwise discriminate against any person in connection with the award and performance of any contract covered by 49 CFR part 26 on the basis of race, color, sex, or national origin. Further, MoDOT will not, directly or through contractual or other arrangements, use criteria or methods that have the effect of defeating or substantially impairing accomplishment of the objectives of the USDOT or MoDOT DBE Program with respect to individuals of a particular race, color, sex, or national origin, in MoDOT's administration of the DBE Program. The commission and MoDOT are bound by, and agree to comply with, all requirements of USDOT's 49 CFR part 26, the provisions of which are incorporated by reference into this rule.

(9) DBE Program Duration and Updates. MoDOT will continue to carry out the DBE Program until all funds from the USDOT financial assistance have been expended, or Congress has terminated the DBE Program. MoDOT will provide USDOT with updates and revised program submissions representing any significant changes in the MoDOT DBE Program.

(10) No Quotas or Set-Asides. MoDOT does not use quotas or set-asides in any way in the administration of the DBE Program.

(11) Measures Taken in Anticipation of a Unified Certification Process.

(A) In anticipation of the Unified Certification Process (UCP) and its inherent cooperative program administration, as required by USDOT at 49 CFR section 26.81, MoDOT has submitted to USDOT one DBE Program which incorporates all modes and agencies within the USDOT, including the Federal Transit Administration (FTA) and Federal Aviation Administration (FAA) programs. The MoDOT External Civil Rights Unit and its Administrator will work closely with the FTA and FAA program administrators to develop uniform certification and reporting processes.

(B) The External Civil Rights Unit is responsible for the administration of the DBE program for all USDOT agency requirements. This DBE Program administration includes goal setting for concurrence, participation, verification, and DBE certification.

(C) Any recipients of USDOT funding through the commission and MoDOT will be required to comply with MoDOT's DBE Program, unless they have a USDOT-approved program of their own. The requisite MoDOT DBE Program compliance includes, but is not limited to, observing all provisions of this chapter and MoDOT's approved DBE Program which govern MoDOT's recipients of USDOT funding; and inserting the necessary provisions in their contracts to assure that their contractors, subcontractors and suppliers comply with the applicable provisions of this chapter and MoDOT's approved DBE Program. Once a statewide UCP is defined, all recipients will be required to accept only those firms certified under the UCP agreement. All Block Grant recipients

will continue to be required to comply with leasing goals established by the sponsoring agency.

(12) Financial Institutions Owned and Controlled by Socially and Economically Disadvantaged Persons. MoDOT will identify and determine the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged persons in Missouri. MoDOT will make reasonable efforts to use the services of these institutions, within the scope permitted by state law. MoDOT will encourage prime contractors and other firms to use the services of those financial institutions which are owned and controlled by socially and economically disadvantaged persons.

(13) Required Contract Clauses in USDOT-Assisted Contracts and Subcontracts.

(A) Pursuant to 49 CFR section 26.13(a), each financial assistance agreement the commission or MoDOT signs with a USDOT operating administration, or with another primary recipient of USDOT funding subject to 49 CFR part 26, shall contain the following assurance, in which "DOT" and "the Department" refer to USDOT: "The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award or performance of any DOT-assisted contract, or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*)."

(B) As mandated by 49 CFR section 26.13(b), MoDOT will require the following assurance to be included in every USDOT-assisted contract which MoDOT or the commission signs with a contractor, and each subcontract that prime contractor signs with a subcontractor; where "DOT" refers to USDOT and "the recipient" means MoDOT and the Commission: "The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out all applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."

(14) Overconcentration of DBE Firms. USDOT rule 49 CFR section 26.33(a) provides that if MoDOT determines that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, MoDOT must devise appropriate measures to address that overconcentration. MoDOT has not identified any types of work in which DBE firms are so overconcentrated. MoDOT will continue to monitor DBE firm participation and usage, and will take appropriate action to address any identified DBE firm overconcentration in a certain type of work.

(15) Mentor-Protégé Program. USDOT rule 49 CFR section 26.35 discusses mentor-protégé programs in the context of the DBE Program. MoDOT will not be participating in a mentor-protégé program at this time.

(16) Program Violations, or False or Fraudulent Claims or Conduct. MoDOT will notify USDOT of any program violations, or suspected false, fraudulent or dishonest conduct, in connection with the DBE Program, in order for USDOT (and/or the U.S. Department of Justice) to take any of the compliance procedures, enforcement actions or sanctions provided in 49 CFR part 26, subpart F. These procedures, actions or sanctions include, but are not limited to: suspension or termination of federal funding; refusal to approve projects, grants or contracts until deficiencies are remedied; U.S. government-wide suspension or debarment proceedings under 49 CFR part 29; available program fraud and Civil Remedies provided for in 49 CFR part 31; or criminal prosecution under 18 U.S.C. section 1001 or other applicable provisions of law. MoDOT will also consider initiating compliance procedures, enforcement actions or sanctions available under Missouri civil, criminal, contract law, or in equity. The commission and MoDOT will consider whether the conduct at issue affects the determination of that entity's responsibility as a contractor, and thus, the entity's eligibility to receive future commission contracts.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.

PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Transportation \$10,000 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.

PRIVATE COST: This proposed rule will not cost private entities, including small businesses, more than \$500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE
PUBLIC ENTITY COST**

I. 7 CSR 10-8.021

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.021, General Information

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Transportation	\$10,000.00

III. WORKSHEET

MoDOT's expenditures:

Preparation of DBE Directory (including monthly updates)

Printing , binding, and postage \$ 10,000.00
(2,000 at \$5 each)

TOTAL \$ 10,000.00

IV. ASSUMPTIONS

The fiscal impact on the Missouri Department of Transportation is based upon the following assumptions and methodology:

(a) MoDOT will submit a DBE Directory to all contractors. This is a new process and it is impossible to determine the actual number of directories to be distributed.

(b) These public entity costs will recur each year for the life of the rule; however, the number of contractors will vary from year to year and are almost impossible to predict accurately.

(c) These DBE Directory costs include the costs of printing and circulating updates to the directory.

**Title 7—DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RESCISSION

7 CSR 10-8.030 Procedures for Certifying Disadvantaged Business Enterprises. This rule set forth the procedures for certifying disadvantaged business enterprises.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RULE

7 CSR 10-8.031 Who Is Governed and Bound by the USDOT and MoDOT DBE Program Regulations

PURPOSE: This regulation describes which individuals, entities and firms are governed and bound by the DBE Program regulations in this chapter, the USDOT DBE Program regulations at 49 CFR part 26, and the USDOT-approved MoDOT DBE Program submissions.

PUBLISHER'S NOTE: The publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the full text of that material will be made available to any interested person at both the Office of the Secretary of State and the office of the

adopting agency, pursuant to section 536.031.4, RSMo. Such material will be provided at the cost established by state law.

(1) United States Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) Regulations Incorporated Into These Rules. The USDOT DBE Program rules at 49 CFR part 26 are adopted by the commission, and incorporated by reference into these MoDOT DBE Program rules. To the extent that any individual, entity or firm is governed by the DBE Program regulations in this chapter, that individual, entity or firm is also governed and bound by the corresponding USDOT DBE Program regulations at 49 CFR part 26.

(2) MoDOT DBE Program Submissions to USDOT. As required by 49 CFR section 26.21, MoDOT must have a DBE Program which USDOT has approved, and MoDOT and the commission must comply with it. Whenever MoDOT and the commission submit proposed significant changes in the MoDOT DBE Program to USDOT for approval, the commission will publish the contemplated significant changes in the *Missouri Register* as proposed rulemaking, or proposed amendments. If and when USDOT approves the proposed changes in MoDOT's DBE Program, the commission will immediately adopt an order or emergency order of rulemaking accordingly, so that the published rules in this chapter of the *Code of State Regulations* are consistent with the MoDOT DBE Program as it is then approved by USDOT.

(3) The following individuals, entities and firms are governed and bound by the DBE Program regulations in this chapter, and the related and pertinent USDOT DBE Program regulations at 49 CFR part 26:

(A) Any individual or firm with an ownership interest in a firm which is DBE certified, or which desires to be DBE certified, as well as that firm and its officers, management, employees, agents and representatives. They are bound when they or the firm apply for DBE certification, while they are certified, and when they participate in any USDOT-assisted program or contract work which is subject to 49 CFR part 26; and for at least three years thereafter;

(B) Any individual, entity or firm which is a recipient through the commission and MoDOT of USDOT funding subject to 49 CFR part 26, including their owners, officers or officials, employees, agents and representatives. They are bound when the individual, entity or firm applies for status as a recipient of USDOT funding subject to 49 CFR part 26; while that funding exists and is available for expenditure; and for at least three years thereafter;

(C) Any individual, entity or firm which is a contractor, subcontractor or supplier on a USDOT-assisted contract issued by MoDOT or any other recipient funded through MoDOT, if that USDOT funding is subject to 49 CFR part 26; including their owners, officers or officials, management, employees, agents and representatives. They are bound when as a contractor, subcontractor or supplier, they submit a bid for the USDOT-assisted contract, or when they submit a bid or quote which is considered for or used in a bid for that USDOT-assisted contract; they remain bound while they perform as a contractor, subcontractor or supplier on such USDOT-assisted contract work; and for at least three years after that work is completed and accepted, and final payment thereon has been made;

(D) Each member of the commission, the MoDOT director and chief engineer, the MoDOT external civil rights administrator, and all other MoDOT or commission officers, officials, employees, agents and representatives. They are bound while they hold that position, and indefinitely thereafter for those DBE program duties and responsibilities of a continuing nature after they have left those positions or employment with the commission or MoDOT; and

(E) The USDOT and its operating administrations Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) and Federal Transit Administration (FTA), plus its agency

administrators, officers, officials, employees, agents and representatives are bound in accordance with 49 CFR section 26.21(b)(1), but only to the extent that the USDOT or one of its operating administrations has approved or will approve the MoDOT DBE Program submissions and updates which correspond to the provisions of these regulations.

***AUTHORITY:** section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.*

***PUBLIC COST:** This proposed rule is estimated to cost the Missouri Department of Transportation \$25,000 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.*

***PRIVATE COST:** This proposed rule is estimated to cost contractors \$15,000 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.*

***NOTICE TO SUBMIT COMMENTS:** Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

FISCAL NOTE PUBLIC ENTITY COST

I. 7 CSR 10-8.031

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.031, Who is Governed and Bound by the USDOT and MoDOT DBE Program Regulations

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Transportation	\$25,000.00

III. WORKSHEET

MoDOT's expenditures:

Preparation of bidder's list

Professional staff - salary of \$48,972/yr. 10% of work time (\$48,972 x 10%)	\$ 4,897.20
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Clerical staff - salary of \$16,000/yr. 33% of work time (\$16,000 x 33%)	\$ 5,280.00
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Software, printing , binding, and postage	\$ 14,823.80
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TOTAL	\$ 25,000.00
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IV. ASSUMPTIONS

The fiscal impact on the Missouri Department of Transportation is based upon the following assumptions and methodology:

(a) MoDOT will submit the bidder's list to all contractors and subcontractors. This is a new process and it is impossible to determine the actual number of lists to be distributed.

(b) These public entity costs will recur each year for the life of the rule; however, the number of program participants will vary from year to year and are almost impossible to predict accurately.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. 7 CSR 10-8.031

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.031, Who is Governed and Bound by the USDOT and MoDOT DBE Program Regulations

II. SUMMARY OF FISCAL IMPACT

Estimate of number of entities by class which would likely be affected by adoption of rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
300	Contractors	\$ 15,000.00

III. WORKSHEET

It is estimated that contractors will expend approximately
\$15,000/yr. to be listed on the bidder's list \$ 15,000.00

TOTAL \$ 15,000.00

IV. ASSUMPTIONS

The fiscal impact on the contractors is based upon the following assumptions and methodology:

- (a) Contractors will work to be included in the bidder's lists.
- (b) These private entity costs will recur each year for the life of the rule; however, the number of program participants will vary from year to year and are almost impossible to predict accurately.

**Title 7—DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RESCISSION

7 CSR 10-8.040 Procedures for Certification Renewal of Disadvantaged Business Enterprises. This rule set forth the procedures for certification renewal of disadvantaged business enterprises.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RULE

7 CSR 10-8.041 Effective Date of the DBE Program Under 49 CFR Part 26

PURPOSE: This rule describes, under federal and state law, when the different components of the USDOT and MoDOT DBE Program became effective in Missouri.

(1) Effective Date of 49 CFR Part 26. United States Department of Transportation's (USDOT's) new Disadvantaged Business Enterprise (DBE) regulations at 49 CFR part 26 became effective and replaced USDOT's former DBE regulations (previously located at 49 CFR part 23) on March 4, 1999. See 49 CFR section 26.9(a), and see USDOT's final rulemaking with comments at 64 *Federal Register* 5096-5148, at page 5096. USDOT has determined and advised all recipients such as Missouri Department of

Transportation (MoDOT) that since part 26 is now in effect, recipients are responsible for implementing it, and they may no longer implement the former part 23. Therefore, under federal law, 49 CFR part 26 became effective and began governing the DBE Program on March 4, 1999; and MoDOT has been obligated to observe and enforce its provisions from and after that date as a matter of federal law.

(2) USDOT Binding Written Interpretations and Guidance. Since the publication of 49 CFR part 26, USDOT has been periodically issuing valid and binding written interpretations and guidance concerning 49 CFR part 26. As MoDOT's External Civil Rights Unit has received or continues to receive these, MoDOT has been observing and enforcing their DBE program guidance, and MoDOT will continue to do so, as a matter of federal law. These valid and binding written guidance are available from USDOT and its Office of Small and Disadvantaged Business Utilization on the Internet at their website for the DBE Program: <http://osdbuweb.dot.gov/programs/dbe/dbe.html>; or on the main USDOT website (www.dot.gov) in the Office of Small and Disadvantaged Business portion of the site. Also, you may write or phone the Office of Civil Rights for Federal Highway Administration (FHWA), Federal Transit Administration (FTA) or Federal Aviation Administration (FAA); or contact the FHWA, FTA, or FAA field offices serving Missouri.

(3) Effective Date of the Commission's Revised DBE Regulations. The commission and MoDOT understand that these revised state DBE Program regulations will take effect on a date later than March 4, 1999 under state law. Therefore, these regulations will not be relied upon for actions taking place prior to their legally-effective date; but the USDOT regulations at 49 CFR part 26 will apply to govern MoDOT's DBE Program from and after March 4, 1999, as required by federal law and section 226.150, RSMo.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; Section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 7—DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RESCISSION

7 CSR 10-8.050 Challenge Procedures for Disadvantaged Business Enterprises. This rule set forth the challenge procedures for disadvantaged business enterprises.

PURPOSE: *This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.*

AUTHORITY: *sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.*

PUBLIC COST: *This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

PRIVATE COST: *This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.*

NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RULE

7 CSR 10-8.051 Procedures and Policies for Initially Certifying and Recertifying Disadvantaged Business Enterprise Firms

PURPOSE: *This rule describes the procedures and policies which MoDOT will use to certify firms as DBEs under federal law.*

(1) The Certification Application and Review Process.

(A) All applicants for Disadvantaged Business Enterprise (DBE) certification by or through MoDOT shall be furnished an application form in one or more parts, written instructions for completing the application, a copy of the rules in this chapter, and a copy of the eligibility requirements of Title 49 CFR part 26. Through this application process, each firm seeking DBE certification has the burden of demonstrating to Missouri Department of Transportation (MoDOT) by a preponderance of the evidence, that it meets the requirements of 49 CFR part 26, subpart D, concerning group membership or individual social and economic disadvantage, business size, ownership and control. As a part of this application process, each applicant must:

1. Provide information showing that the individuals who own and control the applicant firm are members of one or more groups identified in 49 CFR section 26.67(a) that are rebuttably presumed to be socially and economically disadvantaged. Each applicant firm, through one or more of the individuals owning and controlling that firm, must submit one or more signed, notarized "statement of disadvantage" certification(s) on a form provided by MoDOT, certifying under oath that each owner listed in the application as presumptively disadvantaged is, in fact, socially and eco-

nomically disadvantaged. If MoDOT has no reason to question these sworn certifications, then MoDOT will rebuttably presume that each such owner is actually socially and economically disadvantaged. If MoDOT has any reason to question whether one or more of the designated individuals is actually a member of a United States Department of Transportation (USDOT) rebuttably-presumed socially and economically disadvantaged group, MoDOT shall require each such individual to demonstrate, by a preponderance of the evidence, that he is a member of, and has held himself out over a long period of time as a member of, a group whose members are classified by USDOT in 49 CFR sections 26.5 and 26.67(a) as being rebuttably presumed to be "socially and economically disadvantaged individuals";

2. Alternatively, if an applicant firm is owned and controlled by one or more individuals who are not or do not claim to be a member of a group identified in 49 CFR section 26.67(a) as socially and economically disadvantaged, then as part of the application, each such individual must submit an alternative signed and notarized "statement of disadvantage" bearing the same certification under oath as the "statement of disadvantage" form described in paragraph 1. above; which alternative form shows and demonstrates with supporting documentation and details of a convincing nature that such individual is in fact both socially and economically disadvantaged under the criteria specified in 49 CFR part 26;

3. Each individual owner of an applicant firm whose ownership and control are being relied upon for DBE certification must submit a signed, notarized statement of personal net worth (PNW), referencing and accompanied by appropriate supporting documentation. If an individual's PNW statement shows that the individual's personal net worth exceeds \$750,000, then any presumption of economic disadvantage of that individual is rebutted, and that individual cannot be deemed to be "economically disadvantaged" for DBE firm certification purposes.

A. If any financial statement or other information from an accountant or certified public accountant (CPA) is used in preparing or supporting the PNW statement, the supporting documentation must include the accountant's financial statement or analysis, together with all disclosures and footnotes appearing in that document, or an explanation of why that documentation would be unduly lengthy, burdensome or intrusive.

B. If any documentation prepared within the last two years valuing any of the individual owner's corporate or other business or personal property in excess of \$25,000 (except as limited in subparagraph (1)(A)3.C. below) exists, that documentation should be included, or else an explanation of why that documentation would be unduly lengthy, burdensome or intrusive.

C. An individual's PNW statement must report an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm); however, those factors will be excluded from the final computation of personal net worth. A contingent liability does not reduce an individual's net worth. The personal net worth of an individual claiming to be an Alaska native will include assets and income from sources other than an Alaska Native Corporation (ANC) and exclude any of the following which the individual receives from any ANC: cash (including cash dividends on stock received from an ANC) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per annum; stock (including stock issued or distributed by an ANC as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock); and an interest in a settlement trust.

D. To calculate an individual's PNW statement, count the present value of assets attributable to the individual. For marital property held as community property or jointly (such as tenants by the entirety), normally 50% of the value of the asset is attributable

to each person. However, a legal instrument valid under state law may alter this method of asset attribution between married owners. For PNW calculations, the present value of assets, including retirement savings or investment devices (such as a pension plan, IRA, 401(k) plan) do count toward calculations of an individual's personal net worth. These assets, even though generally not readily available as sources of financing for business operations, are still part of an individual's overall wealth. However, only the present value of a retirement savings or investment device should be counted in the PNW computation; not what the individual's return from it may be at some point in the future. Also in making a PNW calculation, it is proper to deduct or subtract any interest or tax losses the individual would incur if he or she liquidated that asset (converted it into cash) today;

4. The applicant firm must certify and show that it is a "small business," within the current U.S. Small Business Administration business size standards found in 13 CFR part 121, for the type or types of work the firm seeks to perform in USDOT-assisted contracts;

5. The applicant firm must certify and show that it (and its affiliates) has had average annual gross receipts (as that term is defined in current U.S. Small Business Administration regulations) over the firm's previous three fiscal years of \$16.6 million or less per year;

6. The applicant firm must certify and show with supporting documentation that the firm is at least fifty-one percent (51%) owned by socially and economically disadvantaged individuals. The applicant firm's ownership by these socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of the firm's arrangements. All securities that constitute actual, effective ownership of a firm must be held directly by disadvantaged persons, as described and with the exceptions provided in 49 CFR section 26.69(d). Also, the applicant firm must certify and show that the contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. All of USDOT's criteria provided in 49 CFR section 26.69 and in other approved guidance apply to govern the determination that the firm is sufficiently owned by socially and economically disadvantaged individuals for DBE Program purposes;

7. The applicant firm must certify and show with supporting documentation that the same socially and economically disadvantaged individuals who own the firm are in control of that firm; and that the applicant firm is an independent business which is viable on its own, without being dependent on its relationship with another firm or firms. The applicant firm must certify and show that its socially and economically disadvantaged owners possess the real and unrestricted power to direct or cause the direction of the management and policies of the firm, and to make day-to-day as well as long-term decisions on matters of management, policy and operations. Furthermore, the applicant firm must certify and show that its socially and economically disadvantaged owners have an overall understanding of, and managerial and technical competence and experience directly related to, the type(s) of business in which the firm is engaged, and the firm's operations. Also, to the extent that state or local law may require the persons who own and/or control a type of firm (such as an engineering design or consulting firm) to have a particular license, registration or other credential, then the same socially and economically disadvantaged individuals who own and control an applicant firm of that type must possess the required license, registration or credential. All of USDOT's criteria provided in 49 CFR section 26.71 and in other approved guidance apply to govern the determination that the firm is actually

controlled by socially and economically disadvantaged individuals for DBE Program purposes;

8. The applicant firm must certify and show that it is an operational, for-profit firm, and that it is not owned or controlled by another firm, even a DBE firm, except as authorized in 49 CFR section 26.73(e), and that the firm meets all other USDOT certification eligibility criteria of 49 CFR part 26, subpart D;

9. Furthermore, the applicant must provide all of the information required by MoDOT in its application form and materials (plus any subsequent requests for information or clarification) relevant to show that the applicant is eligible under 49 CFR section 26.83, as well as 49 CFR part 26, subpart D; and

10. The application must be signed by all of the applicant firm's socially and economically disadvantaged individual owners who are in control of the firm. The application must include the sworn affidavits of those individuals before a notary public or other person authorized to administer oaths, under penalty of perjury of the laws of the United States, attesting to the accuracy, completeness and truthfulness of the information on and accompanying the application form.

(B) Each application received shall be reviewed for completeness, and the applicant firm will be notified in writing of any additional information required. The additional information requested must be received within a maximum of thirty (30) days or as specified in writing. After that period, if the additional information requested has not been received and no extension of time has been requested and granted in writing, MoDOT may deny the application for the firm's failure or refusal to provide the relevant information requested by MoDOT (or possibly requested by USDOT), in accordance with 49 CFR section 26.73(c).

(C) After all required information is received, an on-site visit to the offices of the applicant firm, and to job sites at which the firm is working in Missouri, will be scheduled as required by 49 CFR section 26.83(C)(1). Minutes of the on-site review will be made and a copy of these minutes will be given to the applicant after the close of the on-site review. MoDOT will usually not make an on-site visit of firms domiciled outside of Missouri, but will contact the state of residence of that firm (or another certifying USDOT recipient) for a copy of their on-site visit.

(D) Following the on-site review, a final review of the application and its related documentation, plus the review minutes, will be made to determine that the application is complete, and that MoDOT has no questions or issues which require further submissions or documentation.

(2) The Effect of Small and Disadvantaged Business Program Certification From or Recognized By the U.S. Small Business Administration. MoDOT does not accept a firm's Section 8(a) or Small and Disadvantaged Business (SDB) Program certification from, or as recognized by, the U.S. Small Business Administration. Each such firm having 8(a) or SDB certification must independently establish its eligibility for initial DBE Program certification by MoDOT under the procedures of section (1) above. Each such firm which was previously certified as a DBE by MoDOT under the mandates of the former (now repealed) USDOT DBE Program regulations at 49 CFR part 23 on the basis of its 8(a) or SDB certification, must establish its right to certification independently under the standards of 49 CFR part 26 and the provisions of this chapter, in order to be certified or re-certified as a MoDOT DBE firm after March 4, 1999.

(3) The Effect of Certification as a DBE by Another USDOT Funding Recipient. In accordance with 49 CFR section 26.83(e), MoDOT does not accept a firm's certification by another USDOT funding recipient as a basis upon which MoDOT will rely in the DBE certification process. In each instance, and regardless of the other USDOT recipients which may have previously or currently certified this firm as a DBE for the purposes of their DBE

programs, MoDOT will request, accept and consider certification documentation provided by any other certifying USDOT recipient, together with the documentation required by section (1) of this rule; but MoDOT will in each instance make an independent determination of whether the applicant firm will be certified as a DBE or not.

(4) The Effect of Certification as a DBE by a Missouri Unified Certification Program. A Unified Certification Program (UCP) for the state of Missouri, as required by 49 CFR section 26.81, is being developed but does not currently exist. Once a Missouri UCP exists and has been approved by the U.S. Secretary of Transportation under 49 CFR section 26.81(a), certification as a DBE by the UCP shall be binding upon and honored by MoDOT, and that Missouri-certified DBE firm will not be obligated to separately apply for MoDOT DBE certification under this rule or chapter.

(5) The Burdens of Proof in Certification Determinations. As provided in 49 CFR section 26.61, any firm applying for DBE certification has the burden of demonstrating to MoDOT by a preponderance of the evidence, that the firm meets the requirements of 49 CFR part 26, subpart D, concerning group membership or individual disadvantage, business size, firm ownership and control of the firm. MoDOT will rebuttably presume that individuals who establish themselves to be members of any of the USDOT-designated groups identified in 49 CFR section 26.67(a) are socially and economically disadvantaged. However, such applicants still have the obligation to provide MoDOT with the information concerning their economic disadvantage as required by this chapter and by 49 CFR part 26, subpart D, especially at section 26.67. All other individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to MoDOT by a preponderance of the evidence that they are socially and economically disadvantaged.

(6) Pre-Determination Informal Proceedings to Receive Evidence for DBE Certification Purposes. MoDOT is not obligated to do so, but in the course of any DBE certification application review, if MoDOT decides that facts, circumstances, relationships or other DBE issues require clarification or explanation by this method, MoDOT may request the applicant in writing to appear before MoDOT External Civil Rights Unit personnel and a notary public, to provide verbal testimony in person, sworn under penalty of perjury, together with supporting documentation, on the outstanding questions which MoDOT requests additional information. MoDOT's written notice will specify the issues or questions which require clarification and supplementation by the applicant. MoDOT's written notice will also afford the applicant the alternative opportunity to submit written testimony by affidavit sworn under penalty of perjury, and accompanied by other documentation, on these issues or questions, in lieu of providing sworn verbal testimony before a notary public, if the applicant is confident that such a written reply will sufficiently answer MoDOT's questions and issues. The sworn verbal presentation will not be a hearing, but will be an informal question and answer session. The applicant may have legal counsel present for any reason, including to ask clarifying questions but all sworn statements made and documentation presented shall be given by the individual owners and/or representatives of the applicant firm. A verbatim transcript of any such informal verbal presentation will be prepared by MoDOT at its own cost, and one copy will be provided to the applicant firm at no charge. The information so obtained shall also be used by MoDOT in reaching its determination on DBE firm certification.

(7) Certification Determination. MoDOT shall make its determinations of whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage, by considering all the facts in the record, viewed as a whole. MoDOT will make its decision on the great majority of applications for DBE certification within ninety (90) days of receipt of all information required from the applicant firm under 49 CFR part 26 and this chapter. However, if MoDOT is unable to decide a DBE certification question within that ninety (90)-day period, MoDOT may extend that time period once, for up to an additional sixty (60) days, upon written notice to the applicant firm, explaining fully and specifically the reasons for this extension. If for any reason, MoDOT fails to issue a written decision on certification within that time period (as it may have been extended once in writing), then MoDOT is deemed to have denied the DBE certification application by USDOT, and the applicant firm may appeal that constructive denial to USDOT under the provisions and authority of 49 CFR sections 26.83(k) and 26.89.

(8) Effect of DBE Certification.

(A) If MoDOT determines to certify an applicant firm as a DBE, that firm shall be notified in writing by MoDOT, and MoDOT shall notify the firm of the specific category or categories of work in which the firm is DBE certified. The firm and its pertinent information, including its approved categories of DBE work shall be added to MoDOT's DBE directory immediately. The firm will remain certified for MoDOT purposes for a period of three (3) years from its date of certification. On that date, the firm's DBE certification shall lapse and be null and void, unless the firm has submitted a reasonably complete new certification application to MoDOT. Provided, however, that during the three (3)-year certification period, each DBE firm must accurately, truthfully and completely submit the interim sworn affidavits and documentation to MoDOT required annually and/or when there is a material change in circumstances relating to that firm, as specified in 49 CFR section 26.83 and in this chapter. Also, any certified DBE firm is potentially subject to having its DBE certification removed through the procedures specified in 49 CFR section 26.87 and in this chapter.

(B) DBE certification confers no vested or permanent right or property interest which continues beyond the three (3)-year certification period. About sixty (60) days prior to the end of its three (3)-year certification period, each DBE firm will be mailed a complete packet of certification application materials to be completed and submitted for another three (3)-year certification period. If the certification application materials are completed reasonably accurately and completely by the applicant DBE firm and received by MoDOT's External Civil Rights Unit staff on or before the certification expiration date, then that firm's DBE certification will not lapse on the third anniversary date after certification. While a timely new certification application is pending, the prior DBE certification shall continue until MoDOT rules on the new certification application. If a new certification application is not timely received by MoDOT on or before the third anniversary date of certification, then that firm's DBE certification shall lapse, and the firm shall no longer be DBE certified by MoDOT. Should a firm whose certification has lapsed later apply for DBE certification with MoDOT, that firm shall remain without DBE certification unless and until its new DBE application is approved by MoDOT.

(9) Effect of MoDOT DBE Certification Denial.

(A) If any applicant for DBE certification (whether currently certified by MoDOT or not) is denied certification by MoDOT's External Civil Rights Unit, MoDOT's External Civil Rights Unit shall notify the firm of that decision in writing by certified mail, return receipt requested. The notice shall set out the specific grounds for certification denial in Title 49 part 26 and in this chapter, and shall specifically describe or refer to the evidence (or lack

thereof) which supports that determination by MoDOT's External Civil Rights Unit.

(B) The written notice of denial shall inform the applicant firm of its discretionary right to seek MoDOT administrative review of this certification denial by an independent hearing officer who did not take part in the actions leading to the denial of certification, and who is not subject to direction or instruction from the External Civil Rights Unit, its administrator or its personnel, who did take part in those actions. The notice of denial shall inform the applicant firm that if it requests this MoDOT administrative review within fifteen (15) days of the date of the MoDOT certification denial letter, the firm will have the choice of an informal hearing before the hearing officer, with sworn testimony; and MoDOT will maintain a verbatim record of the hearing and the record evidence. The notice shall further inform the applicant firm of its right to elect to present additional information and arguments supporting its certification to the hearing officer in writing, without going to a hearing. The notice will provide that if the applicant firm elects MoDOT administrative review by either an informal hearing or by written submissions, the applicant firm shall be afforded an opportunity to respond to the reasons stated for denial of certification, and may provide information and arguments concerning why it should be certified. In such an administrative review, the applicant firm still bears the burdens of proof specified in section (5) of this rule and in 49 CFR section 26.61. The procedures for such an informal hearing or written presentation to an independent MoDOT hearing officer are the same as those set forth in this chapter in rule 7 CSR 10-8.091, except that the applicant for initial or renewed certification shall bear the burdens of proof, and not MoDOT. As a result of the MoDOT administrative review, the hearing officer may either affirm the initial MoDOT denial of certification, or may reverse that determination and rule that the firm shall be certified. The ruling of the hearing officer shall be by written findings of fact and conclusions of law, and shall restate or provide by enclosure all pertinent USDOT rules in 49 CFR part 26. If the independent hearing officer ultimately affirms the denial of certification, the applicant firm shall be informed in writing of its right to appeal the certification denial to USDOT under the procedures set forth in 49 CFR section 26.89, and that USDOT regulation shall be cited in full or enclosed.

(C) The written notice of denial shall also clearly state that further administrative review by an independent MoDOT hearing officer is optional, and not mandatory, before the firm may appeal the MoDOT certification denial to USDOT. The applicant firm, if it so wishes, may bypass any further MoDOT administrative review and may appeal the certification denial within ninety (90) days of the date of that certification denial directly to USDOT under the procedures set forth in 49 CFR section 26.89, specifying the procedures for certification appeals to the U.S. Department of Transportation. A copy of 49 CFR section 26.89, and any other pertinent USDOT DBE Program regulations cited in the determination, shall be enclosed with the written notice of denial.

(D) A firm which has been denied DBE certification may not reapply for DBE certification to MoDOT for a period of at least twelve (12) months from the date of the written notice of denial. The written notice of denial shall also inform the applicant firm of that MoDOT restriction.

(E) A firm which has previously been certified, but has been denied renewed certification as a DBE firm upon reapplication to MoDOT for DBE certification, shall be removed immediately from MoDOT's DBE directory listings. The firm, its owners, agents and employees, shall no longer represent this firm's status as an eligible MoDOT DBE firm to any other firm or person. As with any other MoDOT denial of certification, such a firm may not reapply for DBE certification to MoDOT for a period of at least twelve (12) months from the date of the written notice of denial. The written notice of denial shall also inform the applicant firm of that MoDOT restriction.

(10) The Finality of MoDOT's Determination to Deny Initial or Renewal Certification. Whether MoDOT's determination to deny DBE certification initially or on a renewal application is made by MoDOT's External Civil Rights Unit and not appealed to a MoDOT hearing officer, or the determination is made by an independent MoDOT hearing officer under this rule, that determination is final as to MoDOT, but that determination remains appealable to USDOT under the provisions of 49 CFR sections 26.87 and 26.89, and until USDOT has resolved such an appeal, the determination is not final under 49 CFR part 26. Therefore, for purposes of Missouri law, the MoDOT determination to deny initial or renewal certification is not a final state administrative decision, and it is not subject to judicial review in Missouri's courts under the provisions of Chapter 536, RSMo, or 49 CFR part 26.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.

PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Transportation \$372,622.48 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.

PRIVATE COST: This proposed rule is estimated to cost contractors \$350,000 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC ENTITY COST**

I. 7 CSR 10-8.051

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.051, Procedures and Policies for Initially Certifying and Recertifying Disadvantaged Business Enterprise Firms

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Transportation	\$372,622.48

III. WORKSHEET

MoDOT's expenditures:

Estimated 80 firms will apply for DBE certification / yr.
2 Professional staff - total yearly salary of \$48,972/each
37% of work time to review 80 applications
(\$97,944 x 37% = \$36,239.28) \$ 36,239.28

1 full-time clerical staff - salary of \$16,000/yr. \$ 16,000.00

80 firms to be visited on-site by MoDOT

2 Professional staff - total yearly salary of \$48,972/each
30% of work time for 80 on-site visits
(\$97,944 x 30% = 29,383.20) \$ 29,383.20

Hotel / travel to sites \$ 8,500.00
Approximately 70 on-sites will require travel

Estimated 5 predetermination hearings to be held/yr.
MoDOT staff expenses \$ 12,500.00

Estimated 40 firms will be denied and it is
estimated half will request informal hearings
MoDOT staff costs for hearing process \$ 270,000.00

TOTAL \$ 372,622.48

IV. ASSUMPTIONS

The fiscal impact on the Missouri Department of Transportation is based upon the following assumptions and methodology:

(a) MoDOT will receive approximately 80 DBE applications. It is estimated that 80 firms will require on-site review with only 70 requiring substantial travel. It is further estimated that 40 of the 80 applicants will be denied DBE status and half of those firms denied will request a hearing.

(b) These public entity costs will recur each year for the life of the rule; however, the number of DBE applicants, on-site reviews, and hearings will vary from year to year and are almost impossible to predict accurately.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. 7 CSR 10-8.051

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.051, Procedures and Policies for Initially Certifying and Recertifying Disadvantaged Business Enterprise Firms

II. SUMMARY OF FISCAL IMPACT

Estimate of number of entities by class which would likely be affected by adoption of rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
80	Contractors	\$350,000.00

III. WORKSHEET

Estimated 80 firms will apply for DBE certification / yr.
\$50/hr. for contractors work at 40 hours = \$ 2,000
(\$2,000 x 80 firms) \$ 160,000.00

\$50/hr. for on-site review work at 5 hours = \$250
(\$250 x 80 firms) \$ 20,000.00

\$50/hr. for pre-determination hearing process at
40 hours = \$2,000
(\$2,000 x 5 firms out of the 80 firms) \$ 10,000.00

It is estimated 20 informal hearings will be held per year at
A cost to each contractor of \$8,000 \$ 160,000.00

TOTAL \$ 350,000.00

IV. ASSUMPTIONS

The fiscal impact on the Contractors is based upon the following assumptions and methodology:

(a) It is estimated that 80 firms will apply for certification per year and will prepare for on-site reviews. It is further estimated that 5 of the 80 firms will participate in pre-determination hearings and that of the 80 firms 40 firms will be denied participation. Half of the firms applying initially will be denied and of these, half will request an informal hearing.

(b) These private entity costs will recur each year for the life of the rule; however, the number of DBE applicants, on-site reviews, and hearings will vary from year to year and are almost impossible to predict accurately.

**Title 7—DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RESCISSION

7 CSR 10-8.060 Requirements to Participate in a Mentor-Protege Agreement. This rule set forth the requirements to participate in a mentor-protege agreement.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RULE

7 CSR 10-8.061 Missouri Unified Certification Program

PURPOSE: This rule describes Missouri's Unified Certification Program (UCP) for USDOT DBE certification when that program has been established by MoDOT with other USDOT recipients in Missouri; and until then, to state that no such UCP program currently exists in Missouri.

(1) Under the mandates of 49 CFR section 26.81, within several years Missouri Department of Transportation (MoDOT) and all other United States Department of Transportation (USDOT) funding recipients in Missouri must participate in a Unified Certification Program (UCP). When the UCP is established and operational, a firm will be required to apply for certification with only one entity, and if that firm is certified by that one entity, the

firm's Disadvantaged Business Enterprise (DBE) certification will be honored by all other USDOT funding recipients in Missouri. However, such a UCP program does not currently exist in and for Missouri.

(2) When a Missouri UCP program is established, this regulation will be amended to describe how the UCP DBE certification process applies to and governs MoDOT's DBE certification process. This regulation will also be amended to adopt any requirements necessary to conform and comply to the new state UCP program for DBE certification.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.

PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Transportation \$20,000 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.

PRIVATE COST: This proposed rule will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC ENTITY COST**

I. 7 CSR 10-8.061

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.061, Missouri Unified Certification Program

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Transportation	\$20,000.00

III. WORKSHEET

MoDOT's annual expenditures:

Costs for preparing a statewide DBE directory

Printing , binding, and postage \$20,000.00

TOTAL \$ 20,000.00

IV. ASSUMPTIONS

The fiscal impact on the Missouri Department of Transportation is based upon the following assumptions and methodology:

(a) MoDOT will work and assist to develop a statewide listing of DBE firms.

(b) These public entity costs will recur each year for the life of the rule; however, the number of DBE firms will vary from year to year and are almost impossible to predict accurately.

(c) Until the Unified Certification Program is established and active, MoDOT will spend approximately this amount annually in professional and clerical employee salary expenses, travel, legal costs, organizational and meeting expenses, in developing and contracting to create a Unified Certification Program in Missouri, as required by the U.S. Department of Transportation.

**Title 7—DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RESCISSION

7 CSR 10-8.070 Decertification Procedures for Disadvantaged Business Enterprises. This rule set forth the decertification procedures for disadvantaged business enterprises.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RULE

7 CSR 10-8.071 DBE Program Reporting and Disclosure Requirements for Currently Certified DBE Firms

PURPOSE: This rule describes the various affidavits and other documents each currently certified DBE firm must file with MoDOT to remain certified; and the legal implications for a DBE firm which fails to timely file the required affidavit or other documents.

(1) Sworn Affidavit of a Material Change in the DBE's Status or Circumstances.

(A) As required by 49 CFR section 26.83(i), each certified Disadvantaged Business Enterprise (DBE) firm must inform the Missouri Department of Transportation (MoDOT) in writing of any change in circumstances which affects the firm's legal ability

to meet the size, disadvantaged status, ownership or control requirements of 49 CFR part 26; or of any material change in the information provided in the firm's last DBE certification process with MoDOT. This includes, but is not limited to, changes in a firm's management or management responsibilities; changes in operational or daily control of the firm's business; changes in firm ownership; material changes in the firm's annual gross receipts; or material changes in the personal net worth of any one owner who was represented or found to be socially and economically disadvantaged. This written notice to MoDOT should be sent to MoDOT's DBE Program liaison officer, the external civil rights administrator.

(B) The written notice must take the form of an affidavit by the firm's socially and economically disadvantaged individual owners, sworn to before a notary public or other person who is authorized by state law to administer oaths; or else it may be an unsworn declaration which clearly contains a written affirmation that it is executed by each individual signing it under penalty of perjury as provided in the laws of the United States.

(C) The DBE firm and its controlling owners must provide this written notification to MoDOT within thirty (30) days of the occurrence of the change in question, regardless of when the change in status or circumstances occurred. If the DBE firm or its owners fails to make a timely written notification to MoDOT of such a change in status or circumstances, the firm will be deemed to have failed to cooperate, and shall subject the firm to removal of eligibility as a DBE, and each of them to any one or more of the other sanctions provided in 49 CFR section 26.109(c), or elsewhere in state or federal law. An intentional failure to timely notify MoDOT of the change in status or circumstances may subject the DBE firm or its owners to federal or state criminal prosecution for fraud or other crimes, and may also result in contractual or other liability as well.

(2) Annual Sworn Affidavit.

(A) Each year, on or before the annual anniversary date of its last certification, each DBE firm must submit a sworn and notarized affidavit from each of the firm's controlling socially and economically disadvantaged owners, executed under penalty of perjury of the laws of the United States. If a notary is not available, then the affidavit must be executed before a person who is authorized by state law to administer oaths. This affidavit must truthfully, accurately and completely affirm that there have been no changes in the firm's status or circumstances affecting its ability to meet the DBE firm size, ownership or control requirements of 49 CFR part 26, that there have been no changes in that individual owner's status, personal net worth or other circumstances which may affect that individual's status as socially and economically disadvantaged under 49 CFR part 26, that there have been no other material changes in any of the other information originally provided with the firm's application for DBE certification, and that the firm is still eligible for MoDOT DBE certification status; except as the firm may have previously notified or be notifying MoDOT under 49 CFR section 26.83(i) and section (1) of this rule. These affidavits must be accompanied by the most recent personal state and federal income tax returns for each socially and economically disadvantaged individual who is on record with MoDOT as owning and controlling the firm; plus the DBE firm's most recent state and federal income tax returns; and the DBE firm's most recent financial statement. If any audited financial statement has been prepared for an individual disadvantaged owner (individually or jointly with his or her spouse) or for the DBE firm since the last certification date or its annual anniversary, then a complete photocopy of that document must also be provided, including but not limited to its asset and liability descriptions, balance sheets, and all its notes, footnotes, and accompanying statements and qualifications.

(B) MoDOT will notify each DBE firm by regular U.S. mail in writing at least thirty (30) days before the annual anniversary date of certification of this annual sworn affidavit and its accompanying document submission requirement. However, regardless of whether the firm receives that notification, it is the DBE firm's responsibility to timely submit the required affidavit and other documentation.

(C) If the DBE firm and its owners fail to make a timely submission to MoDOT of the required annual affidavits and documentation, or if the information contained therein is not accurate, complete and truthful, the firm will be deemed to have failed to cooperate, which shall subject the firm to removal of eligibility as a DBE, and to any one or more of the other sanctions provided in 49 CFR section 26.109(c), or elsewhere in state or federal law. An intentional failure to truthfully, accurately and completely notify MoDOT in the annual affidavit and its submissions of any change in status or circumstances may subject the DBE firm or its owners to federal or state criminal prosecution for fraud or other crimes, and may also result in contractual or other liability as well.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.

PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Transportation \$16,732.72 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.

PRIVATE COST: This proposed rule is estimated to cost private entities, including small businesses, an estimated \$220,000 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

FISCAL NOTE PUBLIC ENTITY COST

I. 7 CSR 10-8.071

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.071, DBE Program Reporting and Disclosure Requirements for Currently Certified DBE Firms

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Transportation	\$16,732.72

III. WORKSHEET

MoDOT's expenditures:

MoDOT costs to review and process mandated annual
Reports and disclosure forms

2 Professional staff - salary of \$48,972/yr. 13% of work time (\$97,944 x 13%)	\$ 12,732.72
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Clerical staff - salary of \$16,000/yr. 25% of work time (\$16,000 x 25%)	\$ 4,000.00
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TOTAL	\$ 16,732.72
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IV. ASSUMPTIONS

The fiscal impact on the Missouri Department of Transportation is based upon the following assumptions and methodology:

(a) MoDOT will have 2 professional staff and one clerical staff member working to review a firms reporting documents. This is a new process and it is impossible to determine the actual number of reports and work time spent to review.

(b) These public entity costs will recur each year for the life of the rule; however, the percentage of work time will vary from year to year and are almost impossible to predict accurately.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. 7 CSR 10-8.071

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.071, DBE Program Reporting and Disclosure Requirements for Currently Certified DBE Firms

II. SUMMARY OF FISCAL IMPACT

Estimate of number of entities by class which would likely be affected by adoption of rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
220	Contractors	\$ 220,000.00

III. WORKSHEET

There are currently 220 DBE firms and it is estimated
That each firm will expend \$1,000 in preparing reports
(220 firms x \$1,000)

\$220,000.00

TOTAL \$ 220,000.00

IV. ASSUMPTIONS

The fiscal impact on the contractors is based upon the following assumptions and methodology:

(a) Currently there are 220 firms certified in the DBE program. It is estimated that a firm will spend approximately 20 hrs. pr year working on reporting requirements at an average cost of \$50/hr. This is a new process and it is impossible to determine the actual number of reports and work time spent to prepare.

(b) These private entity costs will recur each year for the life of the rule; however, the percentage of work time will vary from year to year and are almost impossible to predict accurately.

**Title 7—DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RESCISSION

7 CSR 10-8.080 Determination and Review Procedures Governing the Failure to Perform a Commercially Useful Function. This rule implemented the requirement of 47 CFR part 23 and section 23.47, that a disadvantaged business enterprise (DBE) must perform a commercially useful function of all federal-aid contract work for which DBE credit is claimed, and governed the state determination and federal review of a rebuttable presumption that a DBE has not performed a commercially useful function.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

AUTHORITY: sections 226.020 and 226.150, RSMo 1994, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Emergency rule filed Feb. 15, 1996, effective Feb. 25, 1996, expired Aug. 22, 1996. Original rule filed Feb. 15, 1996, effective Aug. 30, 1996. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RULE

7 CSR 10-8.081 Ineligibility Complaints

PURPOSE: This rule discusses the procedures for, and confidentiality governing, the filing of a DBE firm ineligibility complaint, in accordance with 49 CFR sections 26.87(a) and 26.109(b).

(1) Filing an Ineligibility Complaint. Any person, firm, recipient, or other legal entity may file with Missouri Department of

Transportation (MoDOT) a written complaint alleging that a currently-certified firm is ineligible for Disadvantaged Business Enterprise (DBE) Program certification, and specifying the reasons why that firm is alleged to be ineligible. However, MoDOT will not accept a general allegation that a firm is ineligible without some supporting details or allegations; and MoDOT will not accept an anonymous complaint for purposes of 49 CFR section 26.87(a) compliance (although MoDOT may act upon the allegations in an anonymous complaint on its own initiative). As a matter of program and contract compliance, MoDOT encourages all DBE firms, prime contractors, other subcontractors, and their owners, officials and employees, to file a detailed ineligibility complaint, with as much supporting information as is available, whenever they have a legitimate reason to believe that a currently-certified DBE firm is not properly eligible for DBE certification under this chapter or under 49 CFR part 26. All DBE firm ineligibility complaints should be addressed to and filed with MoDOT's DBE liaison officer, the external civil rights administrator. An ineligibility complaint may be sworn under penalty of perjury of the laws of the United States as an affidavit before a notary public or other officer authorized to administer oaths, but that is not a legal prerequisite for filing an ineligibility complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified.

(2) MoDOT Processing of Ineligibility Complaints. Upon receipt of a signed ineligibility complaint including one or more detailed allegations, MoDOT will acknowledge the receipt of the complaint in writing; but a copy of the acknowledgement will not be sent to the DBE firm. MoDOT will review its records concerning the DBE firm in question, along with any material provided by the complainant or available from other sources within or without MoDOT. MoDOT will conduct any investigation it deems necessary under the circumstances, although MoDOT is not legally obligated to conduct any investigation beyond a document request and review. At an appropriate time in the complaint investigative phase, MoDOT will notify the DBE firm in writing that a complaint alleging the firm's ineligibility had been filed, and request additional information from the firm relating to the allegations. In that letter, MoDOT will provide the DBE firm with a general statement or summary of the allegation(s) against the DBE firm's continued certification.

(3) The MoDOT Determination and Future Actions. After MoDOT has reviewed the complaint and conducted any investigation it deems necessary, MoDOT shall make a determination whether there is reasonable cause to believe that the DBE firm is ineligible to be certified. If MoDOT finds reasonable cause to believe that the DBE firm is ineligible, MoDOT will provide written notice to the DBE firm that MoDOT proposes to find the firm ineligible for certification, which notice sets forth the reasons for that proposed determination. MoDOT will not provide the complainant with that notice of reasonable cause or the preliminary findings set forth therein, but may advise the complainant that proceedings concerning the firm's DBE eligibility are continuing at MoDOT. In the event that MoDOT determines that reasonable cause does not exist, MoDOT will separately and confidentially notify the complainant and the DBE firm in writing of that determination and MoDOT's reasons for making that determination. All statements of reasons for findings on the issue of reasonable cause shall specifically reference the evidence in the record on which each reason is based.

(4) MoDOT Hearing or Other Due Process Review. When MoDOT notifies a firm that there is reasonable cause to remove its DBE eligibility on the basis of an ineligibility complaint and MoDOT's review and investigation of that complaint, MoDOT will

follow the procedures required by 49 CFR section 26.87(d), and offer the DBE firm an opportunity for an informal hearing with a complete and verbatim record, or if the firm elects, an opportunity to present information and arguments in writing for a written record review, without going to a hearing. Such a reasonable cause notice shall be sent to the DBE firm by certified U.S. mail, return receipt requested. An informal hearing or written record review will be conducted and decided by an independent hearing officer for MoDOT. In the event the firm requests either an informal hearing or a written record review of a reasonable cause determination, MoDOT shall bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of 49 CFR part 26 and this chapter. If the firm does not request either an informal hearing or the opportunity for a written record review within fifteen (15) days after the date the firm receives the reasonable cause notice, as shown on the return receipt card, then the file MoDOT's External Civil Rights Unit has developed on this eligibility complaint (along with any sworn affidavits of the staff or others) shall be turned over to the independent hearing officer to determine if, by a preponderance of the evidence present in the file before the hearing officer, MoDOT has proven that the firm does not meet the certification standards of 49 CFR part 26 and this chapter.

(5) The Confidentiality of Information on a Complainant. Pursuant to 49 CFR sections 26.87(a) and 26.109(b), the identity of complainants shall be kept confidential by MoDOT and all its staff, including its hearing officer, at the complainant's election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to the firm, its owners or other parties, then MoDOT shall advise the complainant to determine if the complainant will waive the privilege of confidentiality. Complainants shall be advised that in some circumstances, their failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or informal hearing, if the allegations cannot be established without actually or effectively disclosing the identity of the complainant. Complainants shall further be notified that if the allegations of the complaint cannot be established by other available means, the complainant shall be expected to provide sworn testimony at an informal hearing or else a sworn affidavit for a written record review, to help MoDOT prove the firm is ineligible for certification by a preponderance of the evidence. If the complainant refuses to waive the confidentiality privilege so as to disclose his or her identity, or refuses to provide oral or written evidence where necessary to substantiate the complaint, then MoDOT will take whatever administrative action is appropriate on the complaint, including but not limited to dismissing the complaint for lack of supporting evidence.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.

PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Transportation \$8,200 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.

PRIVATE COST: This proposed rule will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the

Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

FISCAL NOTE PUBLIC ENTITY COST

I. 7 CSR 10-8.081

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.081, Ineligibility Complaints

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Transportation	\$8,200.00

III. WORKSHEET

MoDOT's expenditures:

Estimated receipt of 2 complaints annually to process

2 Professional staff - salary of \$41/hr. each
50 hours each (\$82 x 50 hours = \$4,100)

\$4,100 x 2 complaints \$ 8,200.00

TOTAL \$ 8,200.00

IV. ASSUMPTIONS

The fiscal impact on the Missouri Department of Transportation is based upon the following assumptions and methodology:

(a) MoDOT estimates receiving an average of 2 complaints per year and that 2 staff people will spend 50 hours each investigating these complaints.

(b) These public entity costs will recur each year for the life of the rule; however, the number of complaints will vary from year to year and are almost impossible to predict accurately.

**Title 7—DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RESCISSION

7 CSR 10-8.090 Finality of Department Determinations in the Disadvantaged Business Enterprise Program. This rule provided general information on the administrative review available in the United States Department of Transportation, on any Disadvantaged Business Enterprise Program action or decision which is made by the Missouri Highways and Transportation Department or Commission.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

AUTHORITY: sections 226.020 and 226.150, RSMo 1994, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Emergency rule filed Feb. 15, 1996, effective Feb. 25, 1996, expired Aug. 22, 1996. Original rule filed Feb. 15, 1996, effective Aug. 30, 1996. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RULE

7 CSR 10-8.091 MoDOT Procedures and Hearings to Remove a Firm's DBE Eligibility

PURPOSE: This rule complies with the requirements of 49 CFR sections 26.67, 26.87 and 26.89, by specifying the grounds for which MoDOT may institute proceedings to remove a firm's DBE certification and eligibility, and the hearing or other due process procedures involved.

(1) Scope of this Rule.

(A) This rule specifies the circumstances in which the Missouri Department of Transportation (MoDOT) will consider removing Disadvantaged Business Enterprise (DBE) eligibility from a firm which is currently certified as a DBE, and the procedures which will be followed to reach a determination of continued DBE eligibility. This rule also specifies the procedures which MoDOT will use to afford an individual owner of a DBE-certified firm and the firm due process if that owner's status is challenged or suspected as not qualifying that individual owner as socially and economically disadvantaged under 49 CFR part 26. This rule will apply to:

1. Complaints of a DBE firm's ineligibility under 49 CFR section 26.87(a) and rule 7 CSR 10-8.081, when MoDOT notifies the DBE firm that there is reasonable cause to remove its DBE eligibility on the basis of an ineligibility complaint and MoDOT's review and investigation of that complaint;

2. MoDOT-initiated proceedings, where based upon notification by the DBE firm of a change in its status or circumstances, or other information which comes to MoDOT's attention, and after any investigation MoDOT External Civil Rights Unit deems appropriate, the MoDOT staff determine that there is reasonable cause to believe that a currently-certified DBE firm is ineligible. At that time, MoDOT shall provide written notification to the DBE firm by certified U.S. mail, return receipt requested, that MoDOT proposes to find the firm ineligible as a DBE, setting forth the specific reasons for that proposed determination. This statement of reasons for the finding of reasonable cause to remove the firm's DBE eligibility shall specifically reference the evidence in the record which MoDOT has developed to date, on which each reason is based. These proceedings also include, but are not limited to, a potential removal of DBE certification where MoDOT has reason to believe that an individual owner classified as socially and economically disadvantaged is actually not so disadvantaged; and the loss of that disadvantaged status would likely result in the firm's loss of DBE eligibility;

3. United States Department of Transportation (USDOT)-initiated proceedings, where a USDOT operating administration has determined that information in MoDOT's records or other information available to USDOT provides reasonable cause to believe that a firm which MoDOT certified as a DBE does not meet the eligibility criteria of 49 CFR part 26. In such an event, the USDOT operating administration may direct MoDOT to initiate a proceeding to remove the firm's certification. If USDOT does direct MoDOT to initiate a proceeding to remove a firm's certification, that USDOT operating administration will provide the DBE firm and MoDOT with the reasons for that directive, including any relevant documentation or other information available to USDOT. When that USDOT action occurs, MoDOT will immediately commence and prosecute a proceeding to remove that firm's DBE eligibility, as provided by 49 CFR section 26.87(b), and by paragraph 2. of this subsection, in accordance with 49 CFR section 26.87(c).

(B) This rule does not apply to:

1. Firms which are seeking initial certification as a DBE, or which previously have been certified as a DBE but are undergoing review to determine if the firm will be certified by MoDOT for an additional three (3)-year period. Their informal hearing or other administrative review process by an independent hearing officer within MoDOT after MoDOT External Civil Rights Unit has denied the firm's certification is addressed in rule 7 CSR 10-8.051, section (9);

2. An individual whose statement of personal net worth shows that the individual owner's personal net worth exceeds \$750,000, and so that individual's presumption of economic disadvantage is rebutted. In that event, MoDOT will simply notify that individual owner and the DBE firm in question in writing by U.S. mail that this owner is not economically disadvantaged and can no longer be used to support the firm's eligibility as a DBE. However, if that individual's loss of economic disadvantage status may render the

firm ineligible as a DBE (which will usually be the case when an individual owner ceases to be economically disadvantaged), then MoDOT will immediately commence and prosecute a proceeding to remove that firm's DBE eligibility, as provided by 49 CFR section 26.87(b) and by paragraph (1)(A)2. of this rule;

3. An individual owner of a DBE firm where MoDOT has reasonable cause to believe that such individual is not socially and/or economically disadvantaged, but that individual is only a minority owner and has no real control over the DBE firm, so his or her status is not necessary to continue the firm's DBE eligibility. Under those circumstances, MoDOT may take no immediate action, but may wait to resolve that issue when the firm next applies for certification. However, if that individual's loss of social and/or economic disadvantage status could possibly render that firm ineligible as a DBE (which will usually be the case when an individual owner ceases to be socially and economically disadvantaged), then MoDOT will immediately commence and prosecute a proceeding to determine whether that individual's presumption of social and/or economic disadvantage should be rebutted, and if so, whether MoDOT should remove that firm's DBE eligibility, as provided by 49 CFR section 26.87(b) and by paragraph (1)(A)2. of this rule.

(2) MoDOT Hearing or Other Due Process Review. When MoDOT notifies a firm that there is reasonable cause to remove its DBE eligibility for any basis specified in section (1) of this rule, MoDOT will follow the procedures required by 49 CFR section 26.87(d), and offer the DBE firm an opportunity for an informal hearing with a complete and verbatim record, or if the firm elects, an opportunity to present information and arguments in writing for a written record review, without going to a hearing. Such a reasonable cause notice shall be sent to the DBE firm by certified U.S. mail, return receipt requested. Such an informal hearing or written record review will be conducted and decided by an independent hearing officer for MoDOT. In the event the firm requests either an informal hearing or a written record review of the reasonable cause determination, MoDOT shall bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of 49 CFR part 26 and this chapter. If the firm does not request either an informal hearing or the opportunity for a written record review within thirty (30) days after the date the firm receives the reasonable cause notice, as shown on the return receipt card, then the file MoDOT's External Civil Rights Unit has developed on this eligibility complaint (along with any sworn affidavits of the staff or others) shall be turned over to the independent hearing officer to determine if, by a preponderance of the evidence present in the file before the hearing officer, MoDOT has proven that the firm does not meet the certification standards of 49 CFR part 26 and this chapter.

(3) The Hearing Officer. The hearing officer which conducts the informal hearing or written record review shall also determine the decision in that proceeding for MoDOT. The hearing officer shall be knowledgeable about the DBE certification requirements of 49 CFR part 26 and this chapter. At MoDOT's sole election, the hearing officer may be a licensed attorney, a registered professional engineer, or any other qualified individual. If the hearing officer is not a licensed attorney, the hearing officer may have present or receive assistance from a licensed attorney knowledgeable about the DBE Program, to aid and advise the hearing officer on evidentiary issue rulings and other legal or procedural questions. In any event, the hearing officer will not be from MoDOT's External Civil Rights Unit, and will not take any direction from that unit, its personnel, or other MoDOT personnel who may have taken part in actions leading to the reasonable cause determination, or in seeking to implement the proposal to remove the firm's DBE eligibility. The hearing officer shall decide all evidentiary or other procedural issues which arise in the course of the informal hearing

or written record review proceedings, as well as solely issuing the final written determination of the firm's DBE eligibility for MoDOT. The hearing officer shall also be the sole judge of the credibility of witnesses in any MoDOT informal hearing or written record review.

(4) The Informal Hearing Process.

(A) If a DBE firm requests an informal hearing to resolve the question of its DBE eligibility, that informal hearing shall be held at a location of MoDOT's choosing in Missouri before a notary public who will administer oaths, and who will prepare a complete and verbatim written record of the hearing at MoDOT's expense. The informal hearing is not a "contested case" under the provisions of Chapter 536, RSMo. The DBE firm and/or its owners need not be represented by an attorney licensed to practice in Missouri, but they have the right to such legal representation during the informal hearing process if they so choose. The DBE firm may be represented by a controlling owner, to the extent that practice does not constitute the unauthorized practice of law. MoDOT shall be represented by a member of the External Civil Rights Unit, and by a licensed attorney.

(B) At least ten (10) days prior to an informal hearing, the MoDOT External Civil Rights Unit shall provide the DBE firm and the hearing officer with a copy of the entire record pertinent to the issues, upon which the reasonable cause findings were made. That record shall be received into evidence over any objection. The DBE firm and MoDOT shall have the right to supplement the record prior to or at the time of the informal hearing, by affidavit or other written documentation, as well as by sworn testimony given during the hearing. Within reason, all notarized affidavits sworn or affirmed under penalty of perjury, and all other competent and relevant evidence presented by the parties, shall be received by the hearing officer and considered for what it is worth. However, as to any affidavits or other documentary evidence which are disputed or objected to upon the record, the objecting party may present opposing sworn verbal testimony or affidavits at a later date (if the hearing officer deems that necessary), to be scheduled by the hearing officer so as to give the objecting party a fair and reasonable opportunity to respond. If a party wishes to do so, that party may, in addition to cross-examination of an adverse witness, present one or more sworn witnesses to rebut oral or written testimony given previously at the informal hearing.

(C) All witnesses shall be sworn by the notary public, or declare or affirm their testimony under penalty of perjury, in accordance with section 492.060, RSMo and 49 CFR part 26, before they are permitted to testify. Sworn testimony may be given in statement form or in question and answer form. Each witness shall be subject to cross-examination. Depositions for testimonial purposes may be used when agreed to by both parties and when the witness agrees to appear voluntarily. Or, a deposition may be used if a Missouri court so orders and/or issues a subpoena or subpoena duces tecum to compel the witness's attendance and testimony under such terms and conditions as the court deems appropriate, in order to provide a fair proceeding and due process to each party. Any opening or closing statements requested by the hearing officer from counsel or other party representatives shall not be considered as evidence, unless they are given as sworn testimony, or affirmed or declared under penalty of perjury, and they are subject to cross-examination by the opposing party. Any party, during the presentation of its case in chief or in its rebuttal evidence, may call as a witness any person or party present; but the hearing officer has no authority to issue subpoenas or subpoenas duces tecum to compel testimony or the production of evidence.

(D) In proceedings where there is a complaining witness who has agreed to be identified and to disclose all of its prior submissions and complaints to the DBE firm, or in other proceedings under this rule upon written application to all parties; where the hearing officer deems it appropriate and in the best interests of

developing a fair and complete record; a complaining witness may be authorized to participate as an additional party at the hearing, to present relevant and competent evidence and testimony, and to cross-examine and rebut witnesses and testimony, concerning whether the DBE firm should remain certified and eligible. Provided, however, that MoDOT shall also retain the full right and opportunity to present its relevant, competent and substantial evidence and testimony on the eligibility issues, and to cross-examine and rebut opposing witnesses.

(E) As time, the interests of fairness, or scheduling needs may require, the hearing officer may continue or reschedule an informal hearing, to begin or to resume on a specific date, at the same or at another location. However, the hearing officer is not compelled to consider or rule favorably upon a written or oral request for a continuance or for resumption of the hearing on a later date, except when that is required to provide the minimum due process required for a fair hearing, such as when a later resumption may be warranted to provide an opportunity to complete a party's case in chief, or to rebut unexpected opposing testimony and evidence. During the rebuttal phase of the informal hearing, no new oral, written, documentary or other evidence should be received unless it is relevant to rebut evidence previously presented by an opposing party.

(F) A reasonable time after the conclusion of a hearing, the hearing officer shall provide each party with a complete copy of the transcript and the rest of the record evidence upon request, if that party is willing to pay MoDOT for the actual cost of preparing a complete copy of the record. If any party so requests, the hearing officer shall afford each party the opportunity to file a brief with proposed findings of fact and a recommended decision, which should be complete with citations to the record and to other supporting record evidence, on a date specified.

(G) As specified in 49 CFR section 26.87(d)(1), MoDOT bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the DBE certification standards of 49 CFR part 26, before the hearing officer may issue a decision that the firm is no longer eligible for DBE certification.

(5) The Written Record Review.

(A) If a DBE firm requests a written record review to resolve the question of its DBE eligibility, the MoDOT External Civil Rights Unit shall provide the DBE firm by certified U.S. mail, return receipt requested, and the independent hearing officer with a copy of the entire record pertinent to the issues upon which the reasonable cause findings were made. That record shall contain one or more sworn affidavits or certifications, or possibly verbatim records of sworn verbal statements made under oath, affirmation or other declaration under penalty of perjury. That record shall be received into evidence by the hearing officer over any objection of the firm or its owners.

(B) The DBE firm shall have up to thirty (30) days after the date the External Civil Rights Unit mails the entire record to the firm in order to supplement that record with its own evidence, including affidavits and other sworn documents. Provided, that if the DBE firm intends to submit any verbatim records of sworn verbal statements, the firm or its legal counsel must make arrangements with the MoDOT External Civil Rights Unit so that legal counsel for MoDOT (an attorney who is not the hearing officer) may be present when the sworn statement is made, so MoDOT can also examine the witness; and the DBE firm may not use or abuse this process in lieu of having an informal hearing. Upon good cause shown, the independent MoDOT hearing officer may extend the time available to the DBE firm to submit its supplement to the record opposing the removal of eligibility.

(C) Within fifteen (15) days after the DBE firm has submitted its supplement to the written record to both the independent hearing officer and the attorney for the MoDOT External Civil Rights Unit, the MoDOT External Civil Rights Unit's attorney may

request the hearing officer in writing to be granted leave to present additional sworn written evidence, solely to rebut any evidence submitted by the DBE firm or its legal counsel. The written motion and showing of good cause must be sent to the DBE firm (or its legal counsel) and must describe specifically what additional sworn evidence the MoDOT External Civil Rights Unit intends to develop, the identity of each additional witness, and what each witness is expected to testify to in rebuttal. Upon good cause shown, and after consideration of any written suggestions of the DBE firm or its legal counsel, the hearing officer may grant MoDOT leave to supplement the written record, under such terms and conditions as the hearing officer deems appropriate to assure a fair and accurate written record.

(D) If any party so requests the hearing officer in writing before the written record is complete, the hearing officer shall afford each party the opportunity to file a brief with proposed findings of fact and a recommended decision, which should be complete with citations to the record evidence, on a date specified.

(E) As specified in 49 CFR section 26.87(d)(3), MoDOT External Civil Rights Unit and its counsel bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the DBE certification standards of 49 CFR part 26, before the hearing officer may issue a decision that the firm is no longer eligible for DBE certification.

(6) The Hearing Officer's Determination. At a reasonable time after the conclusion of the informal hearing or the written record development phase, and any subsequent briefing, the independent hearing officer shall issue written findings and a determination of DBE eligibility of the firm in accordance with 49 CFR section 26.87(f) and (g), supported by citations to the record. The written findings and determination shall be mailed to the firm by certified U.S. mail, return receipt requested, and also served on MoDOT External Civil Rights Unit counsel; plus a copy shall be mailed to any third-party complainant or USDOT operating administration which caused the proceeding to be initiated. If the hearing officer finds that the MoDOT External Civil Rights Unit failed to prove by a preponderance of the evidence that the firm does not meet the certification standards for DBEs in 49 CFR part 26, then the hearing officer shall determine that the firm retains its status as a DBE firm. If the hearing officer finds that the preponderance of the evidence shows that the firm does not meet any one certification standard for DBE certification in 49 CFR part 26, then the hearing officer shall notify the firm in the written determination that effective that date, the firm has been declared ineligible as a DBE, and has been removed from the MoDOT roster of eligible, certified DBE firms, plus the consequences of that action. If the hearing officer's decision is to remove the firm's DBE certification eligibility, the written findings and determination shall also include the required notice of the availability of an appeal of the removal of eligibility to USDOT under 49 CFR sections 26.87(g) and (j), and 26.89. Also, if the proceedings were initiated based upon a third-party complaint of ineligibility and the hearing officer has not determined that the firm is ineligible for DBE certification, the written findings and determination shall include the required notice of the availability of an appeal to USDOT by the complainant, under 49 CFR section 26.89(a)(2).

(7) MoDOT Action Resulting From a Removal of DBE Eligibility. If the determination of the independent hearing officer is to remove the firm's DBE certification and eligibility, then MoDOT External Civil Rights Unit staff shall separately but promptly take the actions required by 49 CFR section 26.87(i). Also, MoDOT's resident engineers and their staff shall take any other or related actions which may be required by the USDOT-assisted contracts on which the firm was working, whose DBE eligibility has now been removed.

(8) The Finality of MoDOT's Determination. The determination of the hearing officer under this rule is final as to MoDOT, but that determination remains appealable to USDOT under the provisions of 49 CFR sections 26.87 and 26.89, and until USDOT has resolved such an appeal, the determination is not final under 49 CFR part 26. Therefore, for purposes of Missouri law, the MoDOT determination is not a final state administrative decision, and it is not subject to judicial review in Missouri's courts under the provisions of Chapter 536, RSMo, or 49 CFR part 26.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.

PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Transportation \$67,500 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.

PRIVATE COST: This proposed rule is estimated to cost contractors \$40,000 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE
PUBLIC ENTITY COST**

I. 7 CSR 10-8.091

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.091, MoDOT Procedures and Hearings to Remove a Firm's DBE Eligibility

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Transportation	\$67,500.00

III. WORKSHEET

MoDOT's expenditures:

Estimated 5 firms will be removed from DBE eligibility

MoDOT estimates expending \$13,500 for preparing and holding hearings
for each DBE firm removed from eligibility
(\$13,500 x 5 firms) \$67,500.00

TOTAL \$ 67,500.00

IV. ASSUMPTIONS

The fiscal impact on the Missouri Department of Transportation is based upon the following assumptions and methodology:

(a) MoDOT estimates that 5 firms will be removed from DBE eligibility per year. MoDOT estimates expending \$13,500 in staff salary for the hearing process for each DBE firm.. During the FY 2000 5 firms were removed from DBE eligibility. However, the hearing is a new process and it is impossible to determine the actual cost.

(b) These public entity costs will recur each year for the life of the rule; however, the number of firms removed from DBE eligibility and hearings held will vary from year to year and are almost impossible to predict accurately.

FISCAL NOTE PRIVATE ENTITY COST

I. 7 CSR 10-8.091

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.091, MoDOT Procedures and Hearings to Remove a Firm's DBE Eligibility

II. SUMMARY OF FISCAL IMPACT

Estimate of number of entities by class which would likely be affected by adoption of rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
5	Contractors	\$ 40,000.00

III. WORKSHEET

5 DBE firms removed from eligibility

Estimated cost of \$8,000 to each firm to prepare for
Hearing (5 firms x \$8,000) \$ 40,000.00

TOTAL \$ 40,000.00

IV. ASSUMPTIONS

The fiscal impact on the Contractors is based upon the following assumptions and methodology:

(a) During FY 2000 there were 5 firms removed from DBE eligibility. MoDOT estimates that a firm will expend approximately \$8,000 to prepare for a hearing. However, the hearing is a new process and it is impossible to determine the actual cost.

(b) These private entity costs will recur each year for the life of the rule; however, the number of firms removed from DBE eligibility and hearings held will vary from year to year and are almost impossible to predict accurately.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RULE

7 CSR 10-8.101 The Effect of a USDOT Certification Appeal

PURPOSE: This rule advises of the legal effect of a USDOT DBE certification appeal upon MoDOT, and upon the other parties involved.

(1) United States Department of Transportation (USDOT) Appeal Determination Binding Upon Missouri Department of Transportation (MoDOT). If an appeal of a MoDOT disadvantaged business enterprise (DBE) certification action is taken to USDOT under 49 CFR section 26.89, the resulting USDOT determination is binding upon MoDOT, but not necessarily other recipients; under 49 CFR section 26.91(a). MoDOT shall then take any actions required by 49 CFR section 26.91(b).

(2) USDOT Appeal Determination Not Binding Upon MoDOT. If an appeal of another USDOT recipient's DBE certification removal or denial action is taken to USDOT under 49 CFR section 26.89 and USDOT upholds that other recipient's denial of certification or removal of DBE eligibility, MoDOT is not governed by that determination, but MoDOT may commence a proceeding to remove the firm's DBE eligibility with MoDOT under 49 CFR section 26.87, as provided in 49 CFR section 26.91(c). In such a proceeding, MoDOT shall not remove the firm's eligibility until a proceeding under rule 7 CSR 10-8.091 is concluded, and the hearing officer determines in that proceeding that the firm's eligibility should be removed. Likewise, if USDOT has reversed the decision of another recipient to deny certification or remove a firm's eligibility, then under 49 CFR section 26.91(c) MoDOT shall take that USDOT determination into consideration, but MoDOT is not required to certify the same firm based upon that USDOT decision.

(3) Judicial Review of a USDOT Determination. Judicial review of a USDOT appeal determination of a denial of DBE certification, or of the removal of a firm's DBE eligibility, whether that USDOT appeal is from MoDOT or another recipient's determination, is not subject to the provisions of Chapter 536, RSMo, and it does not lie in the state courts of Missouri.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RULE

7 CSR 10-8.111 Prompt Payment, Record Keeping and Audit Requirements

PURPOSE: This rule sets forth the DBE Program requirements for the prompt payment of contractors, subcontractors and suppliers, plus related record keeping and audit requirements, on federally-assisted contracts awarded by MoDOT or any other Missouri recipient receiving USDOT funding through MoDOT.

(1) Prompt Payment Requirements.

(A) Missouri Department of Transportation (MoDOT) pays all contractors the sums due them, and when they are due, in compliance with state and federal law, including but not limited to section 34.057, RSMo. In turn, MoDOT and United States Department of Transportation (USDOT) in 49 CFR section 26.29(a), both require that all contractors pay all subcontractors and suppliers for their satisfactory performance of services or sale of materials and supplies, in compliance with the Missouri Prompt Payment Statute, section 34.057, RSMo. MoDOT and USDOT also require the return of all retainage withheld from any subcontractor promptly within the period allowed by section 34.057, RSMo, after that subcontractor's work is satisfactorily completed. For the purposes of compliance with the prompt payment requirements of 49 CFR part 26:

1. A subcontractor has satisfactorily completed its work if MoDOT has paid the contractor for all the work which the subcontractor was to (and did) perform, and MoDOT has accepted from the contractor by partial acceptance or final acceptance, those portions of the project containing all of the subcontractor's work;

2. A subcontractor has satisfactorily completed its work if MoDOT has paid the contractor for all the work which the subcontractor was to (and did) perform, and if the subcontractor has fulfilled all of its obligations to the prime contractor and to MoDOT, for and incident to that subcontract work;

3. For purposes of compliance with 49 CFR section 26.29(a), MoDOT reserves the optional and discretionary right to determine if a subcontractor has satisfactorily completed all of its subcontract work, including all of its obligations to the prime contractor and to MoDOT for and incident to that subcontract work. MoDOT shall not make such a determination of satisfactory completion unless MoDOT has received a written complaint from or on behalf of a subcontractor, and MoDOT has contacted both the subcontractor and the prime contractor for further information. MoDOT shall not make a determination of satisfactory completion unless MoDOT is firmly convinced that the subcontractor has fulfilled all of its obligations to the prime contractor and to the commission; and the subcontract work has been accepted by MoDOT or is now acceptable to MoDOT as satisfactory in all respects. The prime contractor must provide MoDOT and the subcontractor with legal justification in writing under section 34.057, RSMo as to why full payment is not yet due and owing to the subcontractor. If MoDOT determines in writing that the subcontractor has completed all of its project subcontract obligations to the prime contractor and to the commission, MoDOT shall provide copies of that written determination to the subcontractor and to the prime contractor. Within the time provided by section 34.057, RSMo, the prime contractor should then complete payment to that subcontractor. However, the final resolution of any outstanding dispute between a prime contractor and a subcontractor over the issue of whether the

subcontractor was promptly and fully paid for its project work remains with Missouri's courts, under section 34.057, RSMo;

4. MoDOT has and will continue to have a complaint process for any subcontractor (regardless of whether it is a DBE firm) which believes it has not been paid in a timely manner for its completed project work. When a written complaint is received by the MoDOT project resident engineer, MoDOT project office personnel shall conduct a review of the project work status, payments made to the prime contractor, project payments the prime contractor has made to the subcontractor, other contract and subcontract compliance by both parties, in consideration of the allegations made by the complainant. A written response shall be prepared by MoDOT and mailed or delivered to the prime contractor and the subcontractor. The MoDOT project office will continue to monitor the situation until it is apparent that both parties are satisfied. If the subcontractor has not been paid in full by the prime contractor at the time the prime contractor submits final payment documentation to MoDOT, the prime contractor's legal justification for why the subcontractor has not been paid in full must be noted as an amendment to the assurance of satisfaction of all claims. If there is no amendment and the subcontractor's claim for payment is not satisfied, the prime contractor will not receive final payment from MoDOT until the prime contractor has submitted to MoDOT satisfactory legal justification for not paying the subcontractor, as an amendment to the final payment documentation. The final resolution of any outstanding dispute between a prime contractor and a subcontractor over the issue of whether the subcontractor was promptly and fully paid for its project work remains with Missouri's courts, under section 34.057, RSMo.

(B) As USDOT requires, this prompt return of retainage to every subcontractor is not discretionary upon the contractor's determination that the subcontractor's work is satisfactorily completed. Instead, if MoDOT has paid the contractor for all the work which the subcontractor was to (and did) perform, and MoDOT has determined under this rule and 49 CFR part 26 that the subcontractor's work was completed satisfactorily, then the contractor must promptly make any remaining payments to and return all retainage withheld from that subcontractor, or risk liability under the terms of section 34.057, RSMo. However, the final resolution of any outstanding dispute between a prime contractor and a subcontractor over the issue of whether the subcontractor was promptly and fully paid for its project work remains with Missouri's courts, under section 34.057, RSMo.

(C) Except as modified by this rule, each contractor must comply with all other provisions and requirements of section 34.057, RSMo. These requirements apply to each contractor, regardless of whether the subcontractor or supplier involved is a DBE-certified firm or not. For the purposes of DBE Program administration, the contractor's compliance (or not) with the provisions of this rule, shall be determined by MoDOT External Civil Rights Unit personnel.

(2) Record Keeping Requirements. All contractors and subcontractors must retain records of all payments made or received relating to USDOT-assisted contract work, for three (3) years from the date of final payment. These records, in all forms and in any medium, must be available for inspection and copying, upon request without prior notification during normal business hours, by any authorized representative of MoDOT or USDOT. MoDOT may also obtain and maintain records of actual payments made by contractors to DBE firms, for subcontract or supply work committed to those DBE firms at the time of the USDOT-assisted contract award.

(3) Compliance Audits.

(A) USDOT, MoDOT, or authorized agents or representatives of either of these entities, may perform audits of contract payments to contractor, subcontractor and supplier firms. The audits may

review contractors' payments to any or all subcontractors and suppliers, whether DBE firms or not, to ensure that the actual amount paid to DBE subcontractors and suppliers equals or exceeds the dollar amounts stated in the schedule of DBE participation; that there were no kickbacks, rebates or other concealed, false or fraudulent payments made or required; and that the contractor's payments were made promptly, in compliance with section 34.057, RSMo. The audits also may review compliance with any other provisions of this chapter or 49 CFR part 26 by any contractor, subcontractor or supplier. By participating in any USDOT-assisted contract or subcontract work, or tendering supplies as a DBE firm for such work, each contractor, subcontractor or DBE supplier firm consents to such audits, and agrees to provide all documentation and information requested during the audit for inspection and copying voluntarily and without charge.

(B) USDOT, MoDOT, and other authorized agents or representatives of either of these entities, also reserve the right to audit all contractors, subcontractors, and DBE suppliers, participating in any USDOT-assisted contract awarded by the commission or MoDOT, or awarded by any recipient of USDOT funding through MoDOT, to determine their general compliance with each and every provision of this chapter and 49 CFR part 26. By participating in any USDOT-assisted contract or subcontract work, or tendering supplies as a DBE firm for such work, each contractor, subcontractor or DBE supplier firm consents to such audits, and agrees to provide all documentation and information requested during the audit for inspection and copying voluntarily and without charge.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.

PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Transportation \$131,200. A fiscal note containing a detailed estimate has been filed with the secretary of state.

PRIVATE COST: This proposed rule will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

(b) These public entity costs will recur each year for the life of the rule; however, the number of complaints will vary from year to year and are almost impossible to predict accurately.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RULE

7 CSR 10-8.121 MoDOT DBE Program Annual Goals and Contract Goals

PURPOSE: This rule describes how MoDOT will set its annual DBE Program goal, and its individual contract goals on USDOT-assisted contract work.

(1) Annual Overall Program Goal.

(A) The Missouri Department of Transportation (MoDOT) will set its annual overall Disadvantaged Business Enterprise (DBE) Program goal (or goals) as a percentage of all federal aid highway funds for the coming year. The goal will be submitted to USDOT by August 1 of each year. MoDOT will also submit a narrative of the goal-setting process including participants, the evidence utilized, and adjustments made. The narrative will state what percentage is expected to be met by race-neutral and race-conscious means.

(B) Public Participation. In order to ensure public participation, MoDOT will consult DBE firms, DBE organizations, contractor organizations, local public agencies, the general public, and other interested and knowledgeable parties. MoDOT will publish the proposed overall goal in general circulation, minority and female focused publications, trade association publications, and the MoDOT website. Written comments can be directed to MoDOT's DBE liaison officer. MoDOT will publish a notice of its goal-setting process by June 1 of each year in order to allow thirty (30) days for evidence inspection and public comment.

(C) Amount of Goal. MoDOT may use an interim goal-setting mechanism while it updates its availability calculation basis to set its DBE goals based upon the most legally defensible methodology. MoDOT may consult with economics and statistical experts to assist in adopting a goal-setting methodology that best meets the constitutional requirements of narrow tailoring in setting MoDOT's overall DBE goal.

(D) Goal-Setting Process.

1. MoDOT will submit its overall goal to the United States Department of Transportation (USDOT) on August 1 of each year, commencing with August 1, 2000. Before establishing the overall goal each year, MoDOT will consult with minority, female, and general contractor groups, community organizations, and other officials or organizations. These groups include, but are not limited to, the minority contractors associations within the state, Women in Construction, National Association of Women in Construction, Kansas City Hispanic Contractors Association, the Associated General Contractors, Heavy Constructors Association, Associated General Contractors of St. Louis, St. Louis City, City of Kansas City, other municipal entities, and any other organization or individuals necessary to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and MoDOT's efforts to establish a level playing field for the participation of DBE firms.

2. Following this consultation, MoDOT will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the headquarters office for thirty (30) days following the date of the notice. MoDOT and the USDOT will accept comments on the goals for forty-five (45) days from the date of the notice. Normally, MoDOT will issue the notice by June 1 of each year. The notice will include addresses to which comments

may be sent and addresses, including office and website addresses where the proposal may be reviewed. MoDOT will begin using the overall goal on October 1 of each year, unless other instructions have been received from USDOT.

3. MoDOT will include a summary of information and comments received during this public participation process and our responses in the overall goal submission to the USDOT.

(E) Race- and Gender-Neutral Means.

1. MoDOT will strive to meet the maximum feasible portion of the overall annual goal by the race-neutral means. Race-neutral participation involves affirmative action to assist all small business contractors and subcontractors. MoDOT uses the following race-neutral means to increase DBE participation:

A. Where feasible MoDOT will unbundle large contracts to make them accessible to small businesses;

B. Encouraging prime contractors to subcontract portions of work normally done by their own forces, when subcontractors submit a lower quote;

C. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation;

D. Providing assistance in overcoming limitations such as inability to obtain bonding or financing, by such means intended to provide services to help DBEs, and other small businesses, in obtaining bonding and financing;

E. Providing technical assistance and other services;

F. Carrying out information and communications programs on contracting procedures and specific contract opportunities by ensuring the inclusion of DBEs, and other small businesses, on mailing lists for bidders, and ensuring the dissemination bidders lists of potential subcontractors;

G. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

H. Ensuring distribution of the DBE directory, through print and electronic means;

I. Assisting DBEs and other small businesses to develop the capability to utilize emerging technology and conduct business through electronic media.

2. The amount of the goal estimated to be achieved by race-neutral means will be provided upon completion of the availability study and analysis set out above.

3. MoDOT does not operate a DBE program on projects wholly funded by state funds, therefore, an analysis of the DBE participation on these projects participation over and above the USDOT-assisted projects goals, and past participation of DBE firms as prime contractors will be completed in conjunction with the availability analysis. This participation represents the race-neutral participation achieved by MoDOT and will be used to develop a statistical relationship to estimate the amount expected to be achieved by race-neutral means.

4. MoDOT will adjust the estimated breakout of race-neutral and race-conscious participation to reflect actual DBE participation and will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

A. DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures;

B. DBE participation through a subcontract that does not carry a DBE goal;

C. DBE participation on a prime contract exceeding the contract goal.

(2) Project Goals on USDOT-Assisted Contract Work.

(A) MoDOT will use contract goals to meet any portion of the overall goal MoDOT does not project being able to be met using

race-neutral means. MoDOT will establish contract goals only on those USDOT-assisted contracts with subcontracting possibilities.

(B) The External Civil Rights Unit is responsible for setting all DBE goals on MoDOT let projects. The unit is also responsible for review and concurrence on all off-system, aviation, transit, enhancement, consultant, and any other sub-recipient project DBE goal.

(C) The project goal is set by reviewing the type of project, elements of work to be performed, time frame, geographical location, history of DBE and non-DBE usage, and available DBE firms. The goal will be expressed as a percentage of the total amount of a USDOT-assisted contract.

(D) MoDOT will always attempt to ensure that its DBE Program continues to be narrowly tailored to overcome the effects of discrimination, and MoDOT will adjust its use of contract goals accordingly, as directed in 49 CFR section 26.51. MoDOT welcomes all public comments regarding any contract goal or its contract goal-setting processes. These comments should be made in writing, and sent to MoDOT's external civil rights administrator.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Original rule filed May 10, 2000. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.

PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Transportation \$39,177.60 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.

PRIVATE COST: This proposed rule will not cost private entities, including small businesses, more than \$500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE
PUBLIC ENTITY COST****I. 7 CSR 10-8.121**Title: 7 - Missouri Department of TransportationDivision: 10 - Missouri Highways and Transportation CommissionChapter: 8 - Disadvantaged Business Enterprise ProgramType of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.121, MoDOT DBE Program Annual Goals and Contract Goals

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Transportation	\$39,177.60

III. WORKSHEET

MoDOT's expenditures:

MoDOT staff time setting annual program and individual
Contract goals

2 Professional staff - total yearly salary of \$48,972/each
 40 % of work time spent setting goals
 (\$97,944 x 40%) \$ 39,177.60

TOTAL \$39,177.60

IV. ASSUMPTIONS

The fiscal impact on the Missouri Department of Transportation is based upon the following assumptions and methodology:

- (a) MoDOT currently has 2 staff members who spend approximately 40% of their work time setting goals.
- (b) These public entity costs will recur each year for the life of the rule; however, the percentage of work time spent will vary from year to year and is almost impossible to predict accurately.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RULE

7 CSR 10-8.131 DBE Participation Credit Toward Project or Contract Goals

PURPOSE: This rule describes how DBE firm participation credit will be awarded by MoDOT toward a USDOT-assisted contract DBE participation goal.

(1) Disadvantaged Business Enterprise (DBE) Participation Computed. DBE participation will be credited by Missouri Department of Transportation (MoDOT) only in compliance with 49 CFR section 26.55, and only for the value of the work actually performed by the DBE firm toward the DBE contract goal. The contract work performed by the DBE firm must provide a "commercially useful function" as specified in 49 CFR section 26.55(c), in order to receive DBE credit toward a contract goal.

(2) DBE Participation by Classification. DBE firm contract credit varies, based upon the MoDOT classification of that DBE firm, and based upon the nature of the services the DBE firm actually performs on the United States Department of Transportation (USDOT)-assisted contract, as provided in 49 CFR section 26.55. DBE credit will be counted by MoDOT as directed by USDOT, its regulations in 49 CFR part 26, and USDOT's informal guidance; and will generally be counted in the following manner:

(A) Manufacturer. DBE credit is given for the entire value paid to a DBE manufacturer for materials furnished which become a permanent part of the project work. A manufacturer is a firm that owns and operates the facilities to produce the product required by the project and purchased by the contractor or subcontractor;

(B) Supplier. DBE credit is given for sixty percent (60%) of the value paid to a DBE supplier firm for materials which it furnishes and which become a permanent part of the project work. A supplier sells goods to the general public and maintains an inventory at an owned or leased warehouse or store. Bulk items such as steel, petroleum products, or rock do not have to be maintained in an on-site inventory, provided that the supplier regularly sells such products. Credit will not be given for the cost of the materials and also for the hauling of those same materials. Transportation costs for the materials are deemed part of the total cost of the products supplied;

(C) Broker. DBE credit is given for the entire amount of the broker fees or commission received by the DBE broker for materials it purchases, services it obtains, or equipment it procures and resells to a MoDOT contractor. However, no DBE credit is provided for the actual material costs, service charges, or equipment costs to the contractor. Fees or commissions are defined as the difference between what the DBE firm paid for the materials, services or equipment it brokered, and the price paid by the contractor to the DBE firm for those materials, services or equipment. A broker does not manufacture or act as a supplier of the materials, services or equipment, on a regular basis; or meet the criteria for being a manufacturer or supplier;

(D) Trucker. DBE credit is given for the entire amount of transportation or hauling charges paid to a DBE trucker, if the majority of the project trucking or hauling is performed by that DBE trucker firm, with employees of that DBE trucker, using vehicles and equipment owned or leased on a long-term basis by the DBE trucker firm. Trucking services provided in vehicles or equipment leased for just that project, or for a shorter period than the project trucking work, receive no DBE trucking credit. Further, to be a

DBE trucking firm and receive DBE trucking credit, at least one truck actually owned by the DBE trucking firm must be used on that project work to haul project materials or supplies. Full DBE trucking credit will not be given for leased trucks unless they are leased from another DBE firm, DBE owner operators, or a recognized commercial leasing operation, and the lease is of a sufficient term. Firms licensed by the Missouri Public Service Commission as leasing agents qualify as a recognized leasing operation. The leasing of trucks from the prime contractor will not be credited toward meeting a DBE goal, except as a broker, to the extent of the fees and commissions involved (but not the trucking costs). This type of relationship must be approved in advance by MoDOT External Civil Rights Unit personnel, and will be subject to strict scrutiny;

(E) DBE Contractor. Credit is given for the entire amount paid to a DBE prime contractor for labor and materials provided to perform the contract work; except that no credit will be given for labor and materials provided and installed by other contractors or subcontractors which are not DBE firms, approved by MoDOT to perform DBE subcontract work on that contract. Any DBE prime contractor must perform at least thirty percent (30%) of the contract work with the DBE firm's own employees; and the DBE firm must order and pay for all its own supplies and materials, to receive this credit;

(F) DBE Subcontractor. Credit is given for the entire amount paid to a MoDOT-approved DBE subcontractor on a contract, for all the labor and materials provided and installed by the DBE firm to perform a defined and clearly measurable portion of the contract work. Any DBE firm must perform at least thirty percent (30%) of the firm's subcontract work with the DBE firm's own employees, using the DBE firm's own (owned or leased) vehicles, and the DBE firm must order and pay for all of the supplies and materials which it installs and provides.

(3) Supporting Documentation Required. By bidding on a USDOT-assisted contract, or by agreeing to provide manufacturing, broker, subcontractor or supplier services for such work, each contractor, their subcontractors, and all DBE manufacturers, brokers, subcontractors and suppliers, agree to provide MoDOT or USDOT and their agents or representatives with full and complete copies of all documentation of ownership, leasing, payrolls, payments, charges, rebates, kickbacks, invoices, and all manner of related documentation, so that MoDOT and USDOT know and understand accurately and completely how much was paid and received, in gross and net amounts, for DBE contract credit computation purposes. This documentation is also subject to later audit by MoDOT, USDOT, or their agents and representatives. The failure to accurately and completely represent the gross and net payments, and to provide all documentation required to show the full and complete transactions involved, may be fraudulent, and may subject all firms and persons involved to civil suit and sanction, criminal punishment including fines or imprisonment, and other contract or administrative sanctions, by MoDOT, USDOT, or other agencies of the state of Missouri or the United States.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.

PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Transportation \$24,486 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.

PRIVATE COST: This proposed rule will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC ENTITY COST**

I. 7 CSR 10-8.131

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.131, DBE Participation Credit Toward Project or Contract Goals

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Transportation	\$24,486.00

III. WORKSHEET

MoDOT's expenditures:

MoDOT staff will review amounts credited to program and contract goals.

2 Professional staff - total yearly salary of \$48,972/each
25 % of work time spent reviewing amounts to be credited
(\$97,944 x 25%) \$ 24,486.00

TOTAL \$24,486.00

IV. ASSUMPTIONS

The fiscal impact on the Missouri Department of Transportation is based upon the following assumptions and methodology:

(a) MoDOT will have 2 staff members responsible for reviewing amounts credited to goals. It is estimated that 25% of the staff's work time will be spent in this function.

(b) These public entity costs will recur each year for the life of the rule; however, the percentage of work time will vary from year to year and are almost impossible to predict accurately.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program

PROPOSED RULE

7 CSR 10-8.141 USDOT-Assisted DBE Contract Awards and Good Faith Efforts

PURPOSE: This rule sets forth the MoDOT requirements and processes for determining if a bidder has made a good faith effort to achieve a DBE contract goal in a USDOT-assisted contract.

(1) Contract Bidding Requirements.

(A) The award of federally-assisted contracts having Disadvantaged Business Enterprise (DBE) contract goals requires the bidder to submit a completed Missouri Department of Transportation (MoDOT) DBE Participation form as a part of the bidding documents, including a complete list of the DBE firms to be utilized (including manufacturers, suppliers, haulers or truckers, brokers, service providers, and subcontractors); together with a complete detailed listing or explanation of the type and exact nature of the contract services the DBE firm will be providing, if the bidder is awarded the contract. If the bid of the low bidder (as computed) does not show that contractor will meet the full DBE contract goal, that contractor will be afforded the opportunity to further document its good faith efforts to reach that contract goal. However, the bidder will not be given the opportunity to submit additional proposed DBE participation, to try to satisfy the contract goal belatedly. MoDOT treats a bidder's compliance with the good faith efforts requirements of this rule and 49 CFR part 26 as a matter of bidding responsiveness, and a bid which is otherwise low will be rejected as nonresponsive if it does not meet these United States Department of Transportation (USDOT) requirements.

(B) The DBE participation portion of the bidding documents must include the following at the time of the bid submission:

1. The names and addresses of all DBE firms that will participate in the contract work (if awarded to that bidder);
2. A detailed description of the type and nature of the work that each DBE firm listed will perform;
3. The dollar amount of the contract value of each DBE firm's participation, in total and the portion which is applicable to the contract's DBE goal;
4. Written and signed documentation of the bidder's commitment to use each DBE firm manufacturer, subcontractor, broker or supplier it has submitted, to meet the DBE contract goal;
5. Written and signed confirmation from each DBE firm listed that the DBE firm shall participate in the contract work as provided in the bidding contractor's commitment, if the bidder is awarded the contract; and
6. If the bidder's list of DBE firms and services does not show full compliance with the entire DBE contract goal set by MoDOT, the bidder must also include an accurate and complete listing or documentation of its good faith efforts to meet that DBE contract goal, even though the bidder did not succeed in obtaining the full DBE participation requested by the contract goal.

(C) If a low bidder has not met the DBE contract goal, the bidder's documentation of good faith efforts must fully comply with the requirements of 49 CFR section 26.53 and Appendix A to 49 CFR part 26. MoDOT will review the low bidder's documentation, and if the bidding contractor has documented adequate good faith efforts, MoDOT will recommend award of the contract to that low bidder, provided that the bid is otherwise responsive and the bidder is otherwise responsible and qualified to bid.

(2) Failure to Document an Adequate Good Faith Effort. In accordance with 49 CFR section 26.53(d), if MoDOT determines that the apparent low bidder has failed to meet the DBE contract goal, and has not documented adequate good faith efforts to achieve that contract goal in its bidding documents, then MoDOT will notify the bidder by telephone, fax transmission and/or in writing of that determination, and will offer the bidder the opportunity for administrative reconsideration of its good faith efforts, in adequate time prior to the commission meeting at which this contract is scheduled to be awarded.

(3) Administrative Reconsideration.

(A) The apparent low bidder must make a written request for administrative reconsideration of the MoDOT finding of insufficient DBE participation and inadequate good faith efforts, within two (2) working days of the date the bidder was first notified by phone or in writing of MoDOT's determination of the lack of good faith efforts. The bidder's written request for administrative reconsideration may be delivered, faxed or E-mailed to:

External Civil Rights Administrator
 Missouri Department of Transportation
 105 West Capitol Avenue, P.O. Box 270
 Jefferson City, MO 65102-0270

Fax: (573) 526-5640

Telephone: 1-888-ASK-MODOT (1-888-275-6636)

E-mail: taeges@mail.modot.state.mo.us

(B) If the bidder makes a timely request for administrative reconsideration, the bidder will have the opportunity to meet in person with the Administrative Reconsideration Committee, to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Administrative Reconsideration Committee may be constituted as MoDOT deems appropriate and fair, provided that no committee members on reconsideration shall have taken part in the original MoDOT determination that the bidder failed to meet the DBE contract goal or make adequate good faith efforts to do so. The bidder and the Administrative Reconsideration Committee may make alternative arrangements which are mutually agreeable for their discussion, in lieu of a meeting in person. Any discussion shall be recorded, so that if necessary, a verbatim transcript can later be made of the discussion, and the identity of the speakers.

(C) The Administrative Reconsideration Committee shall timely decide whether the bidder did or did not meet the DBE contract goal, or if not, whether the low bidder made adequate good faith efforts to do so. If the Administrative Reconsideration Committee finds that either the low bidder met the DBE contract goal, or else the low bidder did make adequate and sufficient good faith efforts to do so, then MoDOT will recommend that this otherwise responsible low bidder should be awarded the contract on its otherwise responsive low bid. If the Administrative Reconsideration Committee does not find that the low bidder met the DBE contract goal, or that the low bidder made adequate and sufficient good faith efforts to do so, then MoDOT will recommend that the bid of this low bidder should be rejected as non-responsive, and that the Commission should award this contract to the next low bidder which has properly met the DBE contract goal or adequately documented its good faith efforts to do so, in accordance with 49 CFR section 26.53 and Appendix A to 49 CFR part 26.

(D) The Administrative Reconsideration Committee shall communicate its decision at least verbally or by fax to the bidder in question, prior to the Commission meeting at which this contract shall be awarded. If possible, the Administrative Review Committee will also provide the bidder a written decision on its administrative reconsideration request, explaining the basis for its finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so, before the time of that commission meeting. But in any event, the Administrative Review

Committee will provide the bidder with that written decision, explaining the basis for its finding, as soon as possible after the committee has made its decision.

(E) According to 49 CFR section 26.53(d)(5), the result of such an administrative reconsideration process is not administratively appealable to USDOT.

(4) Termination of a DBE Subcontractor or Other DBE Firm.

(A) A contractor may not terminate, release or replace a DBE subcontractor, manufacturer, supplier or other DBE firm listed in its bid, and then perform the work of that terminated DBE firm with its own forces or those of another firm, without MoDOT's prior written consent. The contractor must provide written documentation to the project resident engineer that the DBE firm is unwilling or unable to perform the work, within five working days of the DBE firm's notice to the contractor of its inability to perform the work. The resident engineer will forward this written documentation and notice of intent to replace a DBE firm to the external civil rights administrator for approval. If the DBE firm's removal is approved, or a DBE withdraws from the contract work, the contractor must make a good faith effort to find a replacement DBE firm. The contractor must make a good faith effort to replace the entire dollar value of the DBE work which was to be performed, and not merely find a replacement for that work which the original DBE firm was to have performed. If MoDOT finds that the contractor did not make a good faith effort to locate alternative DBEs, the contractor is entitled to administrative reconsideration before the Administrative Reconsideration Committee, as set out in section (3) of this rule above. Again, if the Administrative Reconsideration Committee concurs and finds that the contractor did not make a good faith effort to replace the absent DBE firm with other DBE firms, then the contractor is subject to administrative and contract remedies upon final verification of the actual extent of DBE participation in the contract work.

(B) If one or more substitute DBE firms are approved for the contract work by MoDOT, the prime contractor must provide the resident engineer and the external civil rights administrator with copies of new or amended subcontracts for those DBE firms. If the contractor fails or refuses to comply in the time specified with any requirement of this section or 49 CFR section 26.53(f), MoDOT will issue an order stopping all or any part of the payments to the contractor on this project or contract, until satisfactory corrective action has been taken. If the contractor remains in non-compliance with any of these requirements or provisions, MoDOT may terminate the contractor for default of the contract work, or take any other appropriate action.

(5) Sanctions for Failure to Meet DBE Contract Commitments. If MoDOT finds that a contractor or other firm has failed to comply with the DBE requirements of its bid, this rule, or 49 CFR section 26.53, then MoDOT shall have the sole authority and discretion to determine the monetary value extent to which the contract DBE goals have not been met, and MoDOT shall assess damages against the contractor in the full amount of that breach, to satisfy and liquidate the contractor's damages for that contract breach. Additionally, MoDOT may impose any other administrative remedies available at law or provided by the contract in the event of such a contract breach. And if the failure to comply with the contractual DBE requirements is intentional or fraudulent in any respect, the contractor and any other firms or persons acting with the contractor are subject to suspension or debarment by MoDOT or the United States, or other civil actions or criminal penalties, in accordance with state and federal law, and USDOT regulations.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals

to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.

PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Transportation \$50,940 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.

PRIVATE COST: This proposed rule is estimated to cost contractors \$10,000 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

FISCAL NOTE PUBLIC ENTITY COST

I. 7 CSR 10-8.141

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.141, USDOT-Assisted DBE Contract Awards and Good-Faith Efforts

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Transportation	\$50,940.00

III. WORKSHEET

MoDOT's expenditures:

MoDOT estimates 5 good-faith effort reviews/yr.

2 Professional staff - total yearly salary of \$48,972/each

10 % of work time spent reviewing

(\$97,944 x 10% x 5 firms) \$ 48,972.00

Administrative Reconsideration by MoDOT

4 Professional staff at \$41/hr.

\$164 x 12 hours \$ 1,968.00

TOTAL \$50,940.00

IV. ASSUMPTIONS

The fiscal impact on the Missouri Department of Transportation is based upon the following assumptions and methodology:

(a) MoDOT will have 2 staff members responsible for good-faith effort reviews. This is a new process and it is impossible to accurately estimate at this time.

(b) These public entity costs will recur each year for the life of the rule; however, the hours of work time will vary from year to year and are almost impossible to predict accurately.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. 7 CSR 10-8.141

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.141, USDOT-Assisted DBE Contract Awards and Good-Faith Efforts

II. SUMMARY OF FISCAL IMPACT

Estimate of number of entities by class which would likely be affected by adoption of rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
5	Contractors	\$ 10,000.00

III. WORKSHEET

It is estimated that a contractor will expend \$2,000
For administrative review processing.

MoDOT estimates 5 good-faith effort reviews/yr.

(\$2,000 x 5 firms) \$ 10,000.00

TOTAL \$10,000.00

IV. ASSUMPTIONS

The fiscal impact on the Contractors is based upon the following assumptions and methodology:

(a) It is estimated there will be 5 good-faith effort reviews per year. It is also estimated that a contractor will spend 40 hours per review. This is a new process and it is impossible to accurately estimate at this time.

(b) These private entity costs will recur each year for the life of the rule; however, the number of reviews and hours of work time will vary from year to year and are almost impossible to predict accurately.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program

PROPOSED RULE

7 CSR 10-8.151 Performance of a Commercially Useful Function by a DBE Firm

PURPOSE: This rule describes when a DBE firm performs a commercially useful function, and how MoDOT and USDOT enforce that requirement in the DBE Program.

(1) DBE Program Contract Compliance Requirement. Pursuant to 49 CFR section 26.55(c), Missouri Department of Transportation (MoDOT) shall count contract expenditures made to a Disadvantaged Business Enterprise (DBE) contractor or subcontractor toward the contract's DBE goal only if the DBE firm is performing a "commercially useful function" (CUF) on that contract.

(A) A DBE firm performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising a distinct element of the United States Department of Transportation (USDOT)-assisted contract work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used by the DBE firm on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, MoDOT shall evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and any other relevant factors.

(B) Some of these CUF factors are discussed below in more detail:

1. Management. The DBE firm must manage the work that has been contracted or subcontracted to it. Management includes, but is not limited to, scheduling work operations, ordering equipment and materials, preparing and submitting certified payrolls, and hiring and firing employees. All work must be performed with a workforce the DBE firm controls, with a minimum of thirty percent (30%) of the work to be performed by the DBE firm's regular, permanent employees, or those hired by the DBE firm for the project from an independent source other than the prime contractor. The DBE owner(s) must supervise daily operations, either personally or with a full-time, skilled and knowledgeable superintendent. The superintendent must be under the DBE owners' direct supervision and control. The DBE owner must make all operational and managerial decisions of the firm. Mere performance of administrative duties is not supervision of daily operations;

2. Materials. The DBE firm shall negotiate the cost, arrange delivery, and pay for the materials and supplies for the project. MoDOT will review invoices to verify billing and payment. The DBE must prepare the estimate, quantity of material, and be responsible for the quality of materials actually installed or used. Two-party checks for payment for materials or supplies may be made to the DBE and the supplier only if that process is specifically approved by MoDOT in advance. No credit toward the DBE goal will be given for the cost of materials or supplies paid directly by the prime contractor for the DBE firm;

3. Employees. In order to be considered an independent business, DBE firms must have and keep a regular workforce. DBE firms cannot "share" employees with non-DBE contractors, and in particular, the prime contractor. DBE firms and the contractors

must provide MoDOT with copies of their payrolls, to establish that the firms have separate and independent work forces.

(C) A DBE firm does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE firm is such an extra participant, MoDOT shall examine similar transactions, particularly those in which DBE firms do not participate.

(3) Presumption that a DBE Firm is Not Performing a CUF. As provided in 49 CFR section 26.55(c)(3), if a DBE firm does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract or subcontract with its own work force, or the DBE subcontracts a greater portion of the work of a contract or subcontract than would be expected on the basis of normal industry practice for the type of work involved, MoDOT shall presume that the DBE is not performing a CUF.

(4) DBE's Evidentiary Presentation to Support a CUF Finding. As provided in 49 CFR section 26.55(c)(4), when MoDOT presumes a DBE is not performing a CUF under section (3) of this rule, the DBE firm may present evidence to MoDOT to rebut that presumption. MoDOT shall receive that information on the record, at a hearing recorded verbatim before an independent hearing officer, which hearing is similar in process to those where an existing DBE firm's eligibility is being removed, under rule 7 CSR 10-8.091. The DBE firm shall have the burden of proving, in such an evidentiary hearing on the record, that the DBE firm is performing or did perform a commercially useful function, given the type of work involved and normal industry practices. If the independent hearing officer rules in favor of the DBE firm in whole or in part, then the MoDOT sanctions or remedies for the apparent breach of the contract shall be reduced or eliminated to that extent. If the independent hearing officer finds that the DBE firm did fail to carry its burden and show that it did perform a CUF considering the type of work involved and normal industry practices, then MoDOT shall impose sanctions or contract remedies accordingly.

(5) Contractor's Evidentiary Presentation to Support a DBE's Performance of a CUF. Likewise, when MoDOT determines a DBE firm is not performing or has not performed a CUF and proposes to disallow or reduce the amount of the contract payments to the contractor involved, or assess liquidated damages against the contractor for its failure to meet its agreed-upon DBE contract goal, MoDOT shall first allow the contractor (and the DBE firm if appropriate) to present evidence to MoDOT to rebut that presumption. MoDOT shall receive that information on the record, at a hearing recorded verbatim before an independent hearing officer, which hearing is similar in process to those where an existing DBE firm's eligibility is being removed, under rule 7 CSR 10-8.091. The contractor and DBE firm shall have the burden of proving, in such an evidentiary hearing on the record, that the DBE firm is performing or did perform a CUF given the type of work involved and normal industry practices. If the independent hearing officer rules in favor of the contractor (and DBE firm) in whole or in part, then the MoDOT sanctions or remedies for the apparent breach of the contract shall be reduced or eliminated to that extent. If the independent hearing officer finds that the contractor (and DBE firm) failed to carry their burden and show that the DBE firm did perform a CUF, considering the type of work involved and normal industry practices, then MoDOT shall impose sanctions or contract remedies accordingly.

(6) Review of CUF Determinations by Agencies of USDOT. As provided in 49 CFR section 26.55(c)(5), MoDOT's decision on whether a CUF has been performed and the related matters is subject to review by the applicable USDOT operating administration, but these decisions are not administratively appealable to USDOT.

It is MoDOT's position that a MoDOT decision on whether a CUF has been performed is not a final action, and so is not subject to judicial review in Missouri courts under Chapter 536, RSMo, at least until after the applicable USDOT operating administration Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) has been requested to administratively review that MoDOT decision. At that time, the action (or non-action) of the USDOT operating administration may become the determination which is judicially reviewable, but a federal agency's determination is not reviewable in the state courts of Missouri.

(7) Contract and Other Sanctions for Failure to Perform a CUF. The failure of a DBE firm to perform a CUF will result in the dollar value of that DBE firm's work not being credited toward the contractor's DBE goal for that contract. This can, and usually will, result in MoDOT withholding payment from the prime contractor of that entire amount which is not credited, if this results in the contractor's failure to achieve the DBE participation goal for that contract. Deliberate conduct or indifference to the CUF requirements can also lead to the DBE firm's removal of eligibility under the procedures of 7 CSR 10-8.091. In any and all cases of deliberate attempts by the contractor, a DBE firm, or other firms to circumvent the requirements of the USDOT or MoDOT DBE Program, or their related contract requirements, or fraud of any kind, these actions may lead to suspension or debarment of the firms and their affiliates by MoDOT and/or the United States, and may result in criminal prosecution and sanctions, plus civil and contractual liability, of any firm or person involved.

(8) The Obligation of the Contractor and the DBE Firm. It is the obligation of each contractor and DBE firm, prior to submitting a bid on a MoDOT contract, to inquire and understand the DBE Program requirements generally, and specifically the DBE's obligation to perform a CUF, and how to value a DBE firm's work for bidding and contract goal satisfaction purposes. Further, it is the contractor's obligation to make sure that a DBE firm on a project performs a CUF on that federally-assisted contract, in accordance with the contractor's approved bid and contract terms. MoDOT and USDOT have no duty or other obligation to first warn or advise a contractor or DBE firm of a failure to comply with the program requirements, before MoDOT or USDOT take administrative, civil or other actions as a result. If a contractor or DBE firm has any questions or concerns in this regard, they may contact the MoDOT External Civil Rights Unit, USDOT, or the appropriate FHWA, FTA or FAA office nearby. As with other legal requirements, ignorance of the DBE Program obligations is no excuse or justification for a contractor or DBE firm's noncompliance with their contractual and program obligations.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.

PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Transportation \$154,588.80 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.

PRIVATE COST: This proposed rule is estimated to cost contractors \$80,000 in the aggregate. A fiscal note containing a detailed estimate has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

FISCAL NOTE PUBLIC ENTITY COST

I. 7 CSR 10-8.151

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.151, Performance of a Commercially Useful Function by a DBE Firm

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Transportation	\$154,588.80

III. WORKSHEET

MoDOT's expenditures:

MoDOT staff will review contract and other data to
Determine whether DBE firms performed a commercially
useful function

2 Professional staff - total yearly salary of \$48,972/each	
20 % of work time spent reviewing amounts to be credited	
(\$97,944 x 20%)	\$ 19,588.80

Approximately 10 informal hearings will be held/yr.	
MoDOT estimates to expending an average of	
\$13,500 per hearing (\$13,500 x 10 hearings)	\$ 135,000.00

TOTAL	\$154,588.80
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IV. ASSUMPTIONS

The fiscal impact on the Missouri Department of Transportation is based upon the following assumptions and methodology:

(a) MoDOT will have 2 staff members responsible for reviewing a commercially useful function. It is estimated that 20% of the staff's work time will be spent in this function. It is also estimated that 10 informal hearings will be held each year and MoDOT estimates expending \$13,500 per hearing.

(b) These public entity costs will recur each year for the life of the rule; however, the percentage of work time and number of informal hearings will vary from year to year and are almost impossible to predict accurately.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. 7 CSR 10-8.151

Title: 7 - Missouri Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 8 - Disadvantaged Business Enterprise Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 7 CSR 10-8.151, Performance of a Commercially Useful Function by a DBE Firm

II. SUMMARY OF FISCAL IMPACT

Estimate of number of entities by class which would likely be affected by adoption of rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
10	Contractors	\$ 80,000.00

III. WORKSHEET

It is estimated that 10 firms will request a hearing on a Commercially useful function determination by MoDOT.

Each firm will expend an average of \$8,000 to prepare for a hearing. (\$8,000 x 10 firms) \$ 80,000.00

TOTAL \$80,000.00

IV. ASSUMPTIONS

The fiscal impact on the Contractors is based upon the following assumptions and methodology:

(a) It is assumed that there will be an estimated 10 firms who will request a hearing during a year and that each firm will expend approximately \$8,000 to prepare for a hearing.

(b) These private entity costs will recur each year for the life of the rule; however, the number of firms and number of hearings will vary from year to year and are almost impossible to predict accurately.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program

PROPOSED RULE

7 CSR 10-8.161 Confidentiality of DBE Program Financial and Other Information

PURPOSE: This rule complies with the USDOT requirements of 49 CFR part 26 on the confidentiality of financial and other confidential information submitted to MoDOT in and for the DBE Program.

(1) Personal Financial Information Provided for Disadvantaged Business Enterprise Program (DBE) Program Purposes. In compliance with 49 CFR section 26.67(a)(2)(ii), and notwithstanding any provision of state law, Missouri Development of Transportation (MoDOT) shall not release an individual's personal net worth statement nor any related documentation concerning or supporting it to any third party without the written consent of the individual who provided or is the subject of that information. Provided, however, that MoDOT shall transmit this information to USDOT for any certification appeal proceeding held under 49 CFR section 26.89 in which the disadvantaged status of that individual is in question.

(2) Confidential Business Information. In compliance with 49 CFR section 26.109(a)(2), MoDOT shall safeguard from disclosure to unauthorized persons any information that may reasonably be considered as confidential business information, consistent with federal and state law. If MoDOT believes that under state law, a third party which has submitted a written request for it is entitled to receive DBE Program information or documentation which the firm or its owners may deem to be confidential business information, MoDOT may notify the firm and its owners a sufficient amount of time in advance of the information release, of the third party's request for information, including information on the identity and address of the third party, so that the firm or its owners may take any legal action they deem appropriate to protect and preserve the confidentiality of that DBE Program information or documentation against disclosure. MoDOT and the commission also reserve the right and discretionary authority to take legal or judicial action to prevent disclosure of confidential business or personal information acquired in or for the DBE Program, consistent with federal and state law, as MoDOT and the commission deem appropriate in the circumstances.

(3) Investigative Information. MoDOT's External Civil Rights Unit regularly conducts investigations in anticipation of legal actions, causes of action or litigation, including but not limited to information on whether a firm should be DBE certified or recertified, whether a firm's eligibility as a DBE should be removed, whether a bidder made a good faith effort in its bid, whether a DBE firm subcontractor has performed a commercially useful function, or properly performed all the work it was obligated to under a federally-assisted contract. These investigations, in turn, may be prepared for and provided confidentially to state or federal USDOT or other law enforcement agencies, for civil or criminal prosecution; or may be used by MoDOT and the commission to support a contract disallowance or breach of contract action. These investigative files in MoDOT's possession are confidential and shall not be produced or disclosed while the investigation is in progress, consistent with federal and state law. If action is taken upon the record developed under this chapter, under 49 CFR part 26, or under other provisions of state or federal civil, criminal or

administrative law, then the pertinent portions or all of that investigative record shall be disclosed to the necessary parties, if and to the extent required of MoDOT by applicable federal or state law.

(4) Other Confidential Information. As required by state and federal law, in producing any DBE Program documents or records, MoDOT shall not disclose to a third party any individual's Social Security number or firm's employer identification number. Further, unless a confidential complainant agrees in writing to the release of his or her identity, or the release of information or documentation which will actually or effectually identify that individual, MoDOT shall comply with the mandates of 49 CFR section 26.109(b) and maintain the confidentiality of the identity of every complainant in the DBE Program. If there is any other valid and lawful basis under state or applicable federal law available to preserve the confidentiality of DBE Program information, MoDOT may use and rely upon that legal basis to avoid disclosure of any information MoDOT perceives to be confidential.

(5) Compliance With Lawful Court Order. MoDOT will comply with a lawful order of any court having proper jurisdiction over the commission, MoDOT or their employees, regarding the release (or not) of any DBE Program documentation or information; subject to the inherent right of the commission to appeal, seek a writ or seek other judicial relief. In any such legal proceeding to compel disclosure of DBE Program information, MoDOT and the commission may notify and afford the entity which provided or is the subject of the information, and United States Department of Transportation (USDOT) or its appropriate operating administration, with the opportunity to participate in the action, and to remove it to federal court or take such other judicial action as each of them deems appropriate.

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Original rule filed May 10, 2000.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 7—DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program

PROPOSED RESCISSION

7 CSR 10-8.200 Disadvantaged Business Enterprise Set-Aside Program General Information. This rule provided general information on the Missouri Highways and Transportation

Commission's Disadvantaged Business Enterprise Set-Aside Program.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 7—DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RESCISSION

7 CSR 10-8.210 Definitions. This rule defined terms applicable to the disadvantaged business enterprise set-aside program.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

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**Title 7—DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RESCISSION

7 CSR 10-8.220 Eligibility for Participation in the Commission's DBE Set-Aside Program. This rule described which DBE firms and joint ventures are eligible to be qualified as participants in the commission's DBE set-aside program, and described the procedures which must be followed to become a qualified DBE.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

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NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 7—DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise
Program**

PROPOSED RESCISSION

7 CSR 10-8.230 Publication of Qualified DBEs and Joint Ventures in the DBE Directory. This rule described how the department would publish the list of qualified DBEs and joint ventures in its DBE directory.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

PROPOSED RESCISSION

7 CSR 10-8.240 Retaining Qualification to Participate in the Commission's DBE Set-Aside Program. This rule described how a qualified DBE or joint venture retains its qualification to participate in this set-aside program, and when a qualified DBE or joint venture graduated from this program.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

PROPOSED RESCISSION

7 CSR 10-8.250 Bidding Limitations on Qualified Firms and Joint Ventures Having Active Commission DBE Set-Aside Contracts. This rule set limits on the number of active DBE set-aside program contracts which a qualified firm or joint venture may have from the commission, in order to achieve greater participation and involvement in the program.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

PROPOSED RESCISSION

7 CSR 10-8.260 DBE Subcontracting Goals for the Commission's DBE Set-Aside Program Contracts. This rule described the program requirement, that a qualified firm or joint

venture in the DBE set-aside program must itself subcontract a certain given percentage of its set-aside contract work to other certified DBE firms or joint ventures.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission

Chapter 8—Disadvantaged Business Enterprise Program

PROPOSED RESCISSION

7 CSR 10-8.270 Disqualification of a Firm or Joint Venture from the DBE Set-Aside Program. This rule described who is responsible for the disqualification of a firm or joint venture from the DBE set-aside program, the effect on pending contracts of that disqualification, and the extent to which any administrative appeals of that decision were available.

PURPOSE: This rule is rescinded as a result of the United States Department of Transportation's (USDOT's) adoption of new Disadvantaged Business Enterprise (DBE) Program regulations in Title 49 Code of Federal Regulations (CFR) part 26, effective March 4, 1999. This rule and all other rules in this chapter are being rescinded in their entirety, and will be replaced by a set of DBE Program emergency rules, renumbered in this chapter, and in compliance with Title 49 CFR part 26.

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expires Nov. 6, 2000. Rescinded: Filed May 10, 2000.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities, including small businesses, more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Transportation, Mari Ann Winters, Secretary to the Commission, P.O. Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Division 10—Division of Employment Security

Chapter 4—Unemployment Insurance

PROPOSED AMENDMENT

8 CSR 10-4.160 Lessor Employing Units. The division proposes to amend previous sections (5), (7) and (8) and adds new sections (7) and (10), and deletes the forms that follow this rule in the *Code of State Regulations*.

PURPOSE: This amendment adds a certificate of deposit as an acceptable form of surety for a lessor employing unit and clarifies when the surety can be released. This amendment also removes the forms following the rule and provides information how to acquire forms.

(5) Any lessor [employment] employing unit depositing securities with the Division of Employment Security in accordance with section 288.032.2, RSMo shall also execute an Assignment and Escrow Agreement provided by the division. The agreement shall contain a provision in which the lessor employing unit consents to an audit of its records prior to the release or cancellation of the securities tendered with the agreement.

(7) Pursuant to section 288.032.2, RSMo, a lessor employing unit, in lieu of a surety bond or securities, may obtain a certificate of deposit issued by any state or federally chartered financial institution in an amount equivalent to the amount required for a surety bond. The certificate of deposit shall be made payable jointly to the employing unit and the Division of Employment Security. The lessor employing unit shall forward the certificate of deposit, along with an executed Assignment and Escrow Agreement, to the division. The lessor employing unit shall forward to the division the certificate of deposit and an executed Assignment and Escrow Agreement on a form provided by the division.

[[7]] (8) The director of the Division of Employment Security shall notify any lessor employing unit who has posted a corporate surety bond, [or] deposited marketable securities [with the division], or obtained a certificate of deposit, of the dollar amount required for that year to comply with the provisions of section 288.032.2., RSMo. The notification shall be mailed to each lessor employing unit not later than the end of February of each calendar year.

[[8]] (9) [The] Neither the obligation for payment [or] nor the bond, securities, or certificate of deposit securing payment[, or both,] of unemployment contributions pursuant to section 288.032.2., RSMo of the Missouri Employment Security Law shall [not] be released until the Division of Employment Security

is satisfied, either by audit or otherwise, that all contributions liability on account of the bond, securities or certificate of deposit has been paid. This section of this rule shall not be construed to increase the liability of the surety in excess of the face amount of the bond regardless of the period of time the bond remains in effect, nor shall it be construed to affect the right of any surety to terminate the bond in accordance with the terms of the bond.

(10) The forms provided by the division to be used to comply with this rule may be obtained by contacting the division at 573-751-3331; by writing the Division of Employment Security, Attention Liability Unit, P.O. Box 59, Jefferson City, MO 65104-0059; or by downloading the form through the division's internet web site at <http://www.dolir.state.mo.us/es/>.

AUTHORITY: section 288.220, RSMo [1994] Supp. 1999. Original rule filed Dec. 2, 1992, effective June 7, 1993. Amended: Filed Feb. 2, 1995, effective Aug. 30, 1995. Amended Filed: May 2, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Employment Security; Attn: Ronald J. Miller, Legal Section, P.O. Box 59; Jefferson City, MO 65104-0059. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions,
Sampling and Reference Methods and Air Pollution
Control Regulations for the Entire State of Missouri**

PROPOSED AMENDMENT

10 CSR 10-6.070 New Source Performance Regulations. The commission proposes to amend subsection (1)(A) and update subparts previously adopted in section (7). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for delegation of enforcement authority.

PURPOSE: This amendment adopts by reference new 40 CFR part 60 subparts finalized between January 1, 1999 and December 31, 1999. Additionally, this amendment updates previously adopted subparts.

(1) General.

(A) The provisions of 40 CFR part 60, as of December 31, [1998] 1999, shall apply and are adopted by reference as part of this rule.

AUTHORITY: section 643.050, RSMo Supp. [1998] 1999. Original rule filed Dec. 10, 1979, effective April 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed May 15, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., July 27, 2000. The public hearing will be held at the Holiday Inn, 10709 Watson Rd., St. Louis, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven days prior to the hearing to Roger D. Randolph, Director, Air Pollution Control Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., August 3, 2000. Written comments shall be sent to Chief, Planning Section, Air Pollution Control Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions,
Sampling and Reference Methods and Air Pollution
Control Regulations for the Entire State of Missouri**

PROPOSED AMENDMENT

10 CSR 10-6.075 Maximum Achievable Control Technology Regulations. The commission proposes to amend subsection (1)(A) and section (4) and update subparts previously adopted in section (4). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for delegation of enforcement authority.

PURPOSE: This amendment adopts by reference new 40 CFR part 63 subparts finalized between January 1, 1999 and December 31, 1999. Additionally, this amendment updates previously adopted subparts.

(1) General.

(A) The provisions of 40 CFR part 63 as of December 31, [1998] 1999, with the exception of those provisions which are not delegable by the United States Environmental Protection Agency (EPA) shall apply and are adopted by reference as part of this rule.

(4) The following are the Maximum Achievable Control Technology (MACT) 40 CFR part 63 subparts that are adopted by reference in this rule. Individual source operations or installations in these categories are subject to this rule based on category specific parameters, as specified in the applicable subpart:

“(F) National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry;

(G) National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater;

(H) National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks;

(I) National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks;”

“(L) National Emission Standards for Coke Oven Batteries;

(M) National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities;

(N) National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks;

(O) Ethylene Oxide Emissions Standards for Sterilization Facilities;”

“(Q) National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers;

(R) National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations);

(S) National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry;

(T) National Emission Standards for Halogenated Solvent Cleaning;

(U) National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins;”

“(W) National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production;

(X) National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting;

(Y) National Emission Standards for Marine Tank Vessel Loading Operations;”

“(AA) National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants;

(BB) National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants;

[/](CC) National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries;

(DD) National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations;

(EE) National Emission Standards for Magnetic Tape Manufacturing Operations;”

“(GG) National Emission Standards for Aerospace Manufacturing and Rework Facilities;[/]

(HH) National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities;

[/](II) National Emission Standards for Shipbuilding & Ship Repair (Surface Coating);

(JJ) National Emission Standards for Wood Furniture Manufacturing Operations;

(KK) National Emission Standards for the Printing and Publishing Industry;

(LL) National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants;”

“(OO) National Emission Standards for Tanks—Level 1;

(PP) National Emission Standards for Containers;

(QQ) National Emission Standards for Surface Impoundments;

(RR) National Emission Standards for Individual Drain Systems;[/]

(SS) National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process;

(TT) National Emission Standards for Equipment Leaks—Control Level 1;

(UU) National Emission Standards for Equipment Leaks—Control Level 2 Standards;

[/](VV) National Emission Standards for Oil-Water Separators and Organic-Water Separators;[/]

(WW) National Emission Standards for Storage Vessels (Tanks)—Control Level 2;”

“(YY) National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Available Control Technology Standards;”

“(CCC) National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants;

(DDD) National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production;

[/](EEE) National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors;”

“(GGG) National Emission Standards for Pharmaceuticals Production;[/]

(HHH) National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities;

[/](III) National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production; [and/

(JJJ) National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins./];”

“(LLL) National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry;

(MMM) National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production;

(NNN) National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing;”

“(PPP) National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production;”

“(TTT) National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting;”

“(VVV) National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works;” and

“(XXX) National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese.”

AUTHORITY: section 643.050, RSMo Supp. [1998] 1999. Original rule filed May 1, 1996, effective Dec. 30, 1996. Amended: Filed April 14, 1998, effective Nov. 30, 1998. Amended: Filed March 15, 1999, effective Oct. 30, 1999. Amended: Filed July 30, 1999, effective March 30, 2000. Amended: Filed May 15, 2000.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions \$54,947 in fiscal year 2002 and \$46,357 per year in subsequent years.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., July 27, 2000. The public hearing will be held at the Holiday Inn, 10709 Watson Rd., St. Louis, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven days prior to the hearing to Roger D. Randolph, Director, Air Pollution Control Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., August 3, 2000. Written comments shall be sent to Chief, Planning Section, Air Pollution Control Program, 205 Jefferson Street, P. O. Box 176, Jefferson City, MO 65102-0176.

**FISCAL NOTE
PUBLIC ENTITY COST****I. RULE NUMBER**Title: 10-Department of Natural ResourcesDivision: 10-Air Conservation CommissionChapter: 6-Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control
Regulations for the Entire State of MissouriType of Rulemaking: Proposed AmendmentRule Number and Name: 10 CSR 10-6.075 Maximum Achievable Control Technology Regulations**II. SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
MDNR Air Pollution Control Program	\$46,357*

*Reflects total annual aggregate cost

III. WORKSHEET

	(Full Year) FY 2002	(Full Year) FY 2003
Mo. Department of Natural Resources		
Air Pollution Control Program	\$54,947	\$46,357

Total aggregate cost per year is estimated to be \$46,357 for the life of the rule.

EXPENDITURES FOR FY2002 (July 1, 2001 through June 30, 2002)

New full-time employee (FTE) Environmental Specialist I/II	FY02
Base Wages \$2432/month x 12 months x 0.9 FTE =	\$26,266
Expense and Equipment \$17,466 x 0.9 =	\$15,719
Fringe Benefits \$29,184 x 26.4% x 0.9 =	\$ 6,934
Indirect Benefits \$29,184 x 22.95% x 0.9 =	<u>\$ 6,028</u>
	\$54,947

EXPENDITURES FOR FY2002 (July 1, 2002 through June 30, 2003)

New FTE Environmental Specialist I/II	FY03
Base Wages \$2432/month x 12 months x 0.9 FTE =	\$26,266
Expense and Equipment \$7,921 x 0.9 =	\$ 7,129
Fringe Benefits \$29,184 x 26.4% x 0.9 =	\$ 6,934
Indirect Benefits \$29,184 x 22.95% x 0.9 =	<u>\$ 6,028</u>
	\$46,357

IV. ASSUMPTIONS

1. The cost for 0.9 new FTE is based on the ratio of sources affected by this rulemaking and the current number of sources applied to the current number of FTEs performing maximum achievable control technology (MACT) related duties. The figures used for this equation are 2809 current sources based on the 1998 Emission Inventory Questionnaire (EIQ) mail-out, 73 new potential sources and 33 current FTEs.

$$\frac{\# \text{ New Sources}}{\# \text{ Existing Sources}} \times \# \text{ Current FTE} = \# \text{ new FTE}$$

$$\frac{73}{2809} \times 33 = 0.9 \text{ New FTE}$$

Number of Entities Affected by Federal Rules	Subpart	Facility Classification
2	(AA)	Phosphoric Acid Manufacturing Plants
Same sources as (AA)	(BB)	Phosphate Fertilizers Production Plants
2	(HH)	Oil and Natural Gas Production Facilities
See assumption 2	(SS)	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
See assumption 2	(TT)	Equipment Leaks - Control Level 1
See assumption 2	(UU)	Equipment Leaks - Control Level 2
See assumption 2	(WW)	Storage Vessels (Tanks) - Control Level 2
0	(YY)	Generic Maximum Available Control Technology Standards
10	(CCC)	Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants
2	(DDD)	Mineral Wool Production
20	(HHH)	Natural Gas Transmission and Storage Facilities
9	(LLL)	Portland Cement Manufacturing Industry
15	(MMM)	Pesticide Active Ingredient Production
Same sources as (DDD)	(NNN)	Wool Fiberglass Manufacturing
7	(PPP)	Polyether Polyols Production
2	(TTT)	Primary Lead Smelting
4	(VVV)	Publicly Owned Treatment Works
0	(XXX)	Ferroalloys Production: Ferromanganese and Silicomanganese

2. Sources covered by subparts (SS), (TT), (UU) and (WW) are assumed to be covered by existing subparts (F), (G), (H) and (I).
3. Salary figures are based on the merit system pay plan for the years considered. Each FTE is considered to be an Environmental Specialist II at a base wage of \$2432 per month.
4. The percentage of basic salary used for the fringe benefits calculation is based upon a rate of 26.4% as provided by the Missouri Department of Natural Resources' Accounting Program.
5. The Division of Administrative Support provided the percentage of basic salary used for the indirect benefits calculation. The rate of 22.95% was established for the Division of Environmental Quality.
6. Cost of living and inflation are not included in the expense calculations.
7. All costs associated with this proposed new rule include only those MACT standards finalized January 1, 1999 through December 31, 1999 and adopted by reference.

7. All costs calculated in this fiscal note are based on the present year and not adjusted for inflation.
8. The figures used for all staff equipment and expense mentioned are based on expansion positions requiring \$17,466 for the first fiscal year and \$7,921 for each subsequent year. Expenses and equipment are broken down as follows.

Computer Equipment	\$ 4,944
Office Equipment	\$ 4,601
Annual Ongoing Expenses	<u>\$ 7,921</u>
TOTAL	\$17,466

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions,
Sampling and Reference Methods and Air Pollution
Control Regulations for the Entire State of Missouri

PROPOSED AMENDMENT

10 CSR 10-6.080 Emission Standards for Hazardous Air Pollutants. The commission proposes to amend section (1) and update subparts previously adopted in section (3). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for delegation of enforcement authority.

PURPOSE: This amendment adopts by reference new 40 CFR part 61 subparts finalized between January 1, 1999 and December 31, 1999. Additionally, this amendment updates previously adopted subparts.

(1) General. The provisions of 40 CFR part 61, as of December 31, [1998] 1999, with the exception of sections 61.4, 61.16, 61.17, and subparts B, H, I, K, W, Q, R, T and those provisions which are not delegable by United States Environmental Protection Agency (EPA) shall apply and are adopted by reference as part of this rule. Authorities which may not be delegated include 40 CFR 61.04(b), 61.12(d)(1), 61.13(h)(1)(ii), 61.112(c), 61.164(a)(2), 61.164(a)(3), 61.172(b)(2)(ii)(B), 61.172(b)(2)(ii)(C), 61.174(a)(2), 61.174(a)(3), 61.242-1(c)(2), 61.244, and all authorities listed as not delegable in each subpart under Delegation of Authority.

AUTHORITY: section 643.050, RSMo Supp. [1998] 1999. Original rule filed Dec. 10, 1979, effective April 11, 1980. For intervening history, please consult the *Code of State Regulations*. Amended: Filed May 15, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this Proposed Amendment will begin at 9:00 a.m., July 27, 2000. The public hearing will be held at the Holiday Inn, 10709 Watson Rd., St. Louis, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven days prior to the hearing to Roger D. Randolph, Director, Air Pollution Control Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., August 3, 2000. Written comments shall be sent to Chief, Planning Section, Air Pollution Control Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for
Industrial Mineral Open Pit and In-Stream Sand and
Gravel Operations

PROPOSED AMENDMENT

10 CSR 40-10.010 Permit Requirements for Industrial Mineral Operations. The commission is adding subsection (2)(F):

PURPOSE: This proposed amendment incorporates a Land Reclamation Commission policy that clarifies what areas of land that were affected before January 1, 1972 need to be permitted.

(2) Operations Not Required to Obtain a Land Reclamation Permit.

(F) Operations that conduct mining activities in areas of land that were affected by surface mining prior to January 1, 1972, subject to the following restrictions:

1. Where overburden that originates from the pre-January 1, 1972 area is placed upon other area of land, a permit will be required for those areas; and

2. Where overburden from an area where a permit is required is placed on an area of land that was affected by surface mining before January 1, 1972, a permit will be required for those areas.

AUTHORITY: sections 444.767, [RSMo Supp. 1993,] 444.770 and 444.784, RSMo [Supp. 1990] 1994. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed May 3, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for
Industrial Mineral Open Pit and In-Stream Sand and
Gravel Operations

PROPOSED AMENDMENT

10 CSR 40-10.020 Permit Application Requirements. The commission is amending section (2) and deleting all forms that follow this rule in the *Code of State Regulations*.

PURPOSE: This proposed amendment changes the dollar amount of the permit fees and incorporates a Land Reclamation Commission policy regarding public notices that are required to accompany permit applications.

(2) As required by section 444.772, RSMo, an applicant shall provide a complete application package submitted which includes the following:

(F) All required fees based upon the type of operation and amount of production as follows:

1. For gravel operations producing less than five thousand (5,000) tons annually, an annual permit fee of [one] two hundred dollars [(\$100)] (\$200) for each application plus an acreage fee of thirty-five dollars (\$35) per whole or fractional acre [permitted]; and

2. For all other operations (including gravel over five thousand (5,000) tons annually), the applicant shall pay an annual permit fee of [three] five hundred [fifty] dollars [(\$350)] (\$500) for each application plus an acreage fee of thirty-five dollars (\$35) per whole or fractional acre permitted plus an annual site fee of

forty dollars (\$40) per site to be operated during the succeeding twelve (12) months;

(H) Proof that a public notice has been published in any newspaper *[with a general circulation in the counties where the land is located]* **qualified under section 493.050, RSMo to publish legal notices in any county where the land is located. A separate public notice will be required for each application.** The applicant shall advertise a public notice in accordance with this subsection each time the applicant files a permit application for a new mine, files a request for expansion to an existing mine, when making revisions to the original operation and reclamation plan and when transferring the permit to a new operator, as defined in sections (5)–(7) of this rule. **The operator shall publish the public notice only after notification from the director that the application is complete. For the purpose of the public notice publication, the director shall have fifteen days from the certified date of receipt of the application to notify the operator whether or not the application is complete.** Public notices shall not be required for renewing existing permits or to permit additional acreage within a currently approved long-term operation and reclamation plan, as defined in paragraph (2)(D)6./ of this rule. **Public notices shall be required if the operational date specified in the long-term mine plan has expired.** The notice must contain the following:

1. A statement of intent to conduct surface mining specifying the mineral and estimated period of operation;
2. The name and address of the operator;
3. A legal description of affected land consisting of county, section, township and range;
4. The number of acres involved;
5. A statement informing the public that comments will be accepted by the director of the Land Reclamation Commission for fifteen (15) days following the publication of the public notice; and
6. The address of the director of the Land Reclamation Commission.

AUTHORITY: sections 444.767, [RSMo Supp. 1993,] 444.772, [RSMo Supp. 1992] and 444.784, RSMo [Supp. 1990] 1994. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed May 3, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities an estimated \$85,500 annually in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 10 - DEPARTMENT OF NATURAL RESOURCES

Division: Industrial Minerals Fee Increase

Chapter: 10--Permit and Performance Requirements for Industrial Mineral Open Pit and In-Stream Sand and Gravel Operations

Type of Rulemaking: Proposed Increase Application Fees

Rule Number and Name: 10 CRS 40-10.020 (2)(F) 1,2 (H)

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the Proposed Rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Gravel operations less than 5000 tons annually the fees will increase from \$100 to \$200 annually. For all other operations, the fees will be raised from \$350.00 to \$500.00 annually.	Industrial Minerals Mining Companies.	Approximately 153 Sand and Gravel permits would increase \$100 each for a total increase of \$15,300. In addition, for all other industrial mineral permits, the fee will be raised from \$350.00 to \$500.00. This increase will affect 570 sites and will increase fees \$85,500 annually

The following list is based on the Standard Industrial Code. The list provides an extensive summary of classes.

SIC Code Commercial or Industrial Classification Number of Facilities

INDUSTRIAL MINERALS MINING

723 industrial minerals permits

III. WORKSHEET

(F)(1) 1. This rule change would increase from \$100 to \$200 Sand and Gravel permits that mine less than 5000 tons annually. 153 permits will be affected by this change.

(F)(2) 2. This rule change would increase from \$350 to \$500 all other industrial mineral permits.

(H) 3. This rule change simply places into rule a current Commission policy. There are no changes to the current practice.

IV. ASSUMPTIONS

1. 1. The original 10 CSR 40-10.020 was filed on August 2, 1991 and became effective on February 6, 1992.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for
Industrial Mineral Open Pit and In-Stream Sand and
Gravel Operations**

PROPOSED AMENDMENT

10 CSR 40-10.040 Permit Review Process. The commission is amending section (1).

PURPOSE: This proposed amendment makes a minor grammatical change.

(1) Within fifteen (15) days of receipt of a complete application, but not before any required public notice period has expired, the director **shall** promptly *[shall]* review the application and shall make a determination on an application. The recommendation will be to either issue or deny.

AUTHORITY: sections 444.767, [RSMo Supp. 1993,] 444.772, [RSMo Supp. 1992,] 444.773, 444.774 and 444.784, RSMo [Supp. 1990] 1994. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed May 3, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for
Industrial Mineral Open Pit and In-Stream Sand and
Gravel Operations**

PROPOSED AMENDMENT

10 CSR 40-10.100 Definitions. The commission is adding sections (5) and (31) and renumbering the remaining sections.

PURPOSE: This proposed amendment establishes the definition of an application.

(5) **Application.** A set of documents inclusive of all information required by 10 CSR 40-10.020, that includes one or more sites, and shall include mining operations by an operator at all sites located in no more than one county. An operator may choose to maintain site files under one company permit document number, as long as all fees are paid according to this definition.

[[5]] (6) **Commission.** The Land Reclamation Commission in the Department of Natural Resources.

[[6]] (7) **Conference, conciliation and persuasion (CC&P).** The administrative means employed by the director or his/her representative to resolve or prevent an alleged violation of the law, rules, permit or conditions of the bond, including, but not limited

to, informal conversations, telephone conversations and letters issued by the director.

[[7]] (8) **Consolidated material.** Any naturally formed aggregate or mass of mineral matter which is firm and coherent and that cannot be excavated by normal construction equipment. Material requires blasting to be excavated.

[[8]] (9) **Director.** The staff director of the Land Reclamation Commission.

[[9]] (10) **Fill dirt.** Material excavated for use as construction fill which does not have a distinctive physical property matching one of the minerals listed under 10 CSR 40-10.010(1) and which will not be refined into one of those minerals. Backfill material for use in completing reclamation is not included in this definition.

[[10]] (11) **Flood plain.** Geographic areas susceptible to periodic inundation from overflow of natural waterways.

[[11]] (12) **Habitual violator.** A person, permittee or operator that has established a pattern of violations of any requirements of the Land Reclamation Act, its corresponding regulations or the permit is defined here as any person or permittee who has—

(A) Three (3) similar violations in any six (6) or less inspections;

(B) Five (5) violations in any ten (10) or fewer inspections; or

(C) Three (3) or more violations in three (3) consecutive inspections.

[[12]] (13) **In-stream sand and gravel operator.** An operator whose entire extraction operation occurs on areas between the defined river or creek banks that are covered by water or are saturated by water throughout the entire year.

[[13]] (14) **Lateral support.** Undisturbed material left in place, with unconsolidated material left in place at no more than a forty degree (40°) grade, to prevent sloughing of the adjacent right-of-way of a public road, street or highway.

[[14]] (15) **Mine expansion.** Involves expansions to the area beyond the area described in an existing operation and reclamation plan. With the exception of a permit fee, a mine expansion requires an application equal to a new permit. An expansion may be requested at any time during the term of an existing permit and requires the filing of a new public notice.

[[15]] (16) **Mineral or industrial mineral.** A constituent of the earth in a solid state which, when extracted from the earth, is usable in its natural form or is capable of conversion into a usable form as a chemical, an energy source or raw material for manufacturing or construction material. For the purposes of this section, this definition also includes barite, tar sands shale, sand, sandstone, limestone, granite, clay, traprock and oil shales, but does not include iron, lead, zinc, gold, silver, coal, surface or subsurface water, fill dirt, natural oil or gas, together with other chemicals recovered.

[[16]] (17) **New permit.** Permits issued for the first time where a new permit number is assigned. All requirements of 10 CSR 40-10.020 apply.

[[17]] (18) **Notice of violation.** The document that is sent by the director to the operator describing the nature of a violation(s) of any law, rule, permit or condition of the bond, the corrective measures to be taken to abate the violation(s) and a time period for abatement of the violation(s). This definition shall include the notice itself, any modification, termination or vacation of the

notice of violation itself by subsequent actions taken by the director or the commission.

[(18)] (19) Operator. Any person, firm or corporation engaged in and controlling a surface mining operation.

[(19)] (20) Overburden. All of the earth and other materials which lie above natural deposits of minerals and also means the earth and other materials disturbed from their natural state in the process of surface mining.

[(20)] (21) Peak. A projecting point of overburden created in the surface mining process.

[(21)] (22) Permit period. The length of time for which the permit is issued, a one (1)-year period.

[(22)] (23) Pit. The place where minerals are being or have been extracted by surface mining.

[(23)] (24) Refuse. All waste material directly connected with the cleaning and preparation of substance mined by surface mining.

[(24)] (25) Renewed permit. Involves only extending the term of an existing permit by another year.

[(25)] (26) Revised operations. Involves the substantial revision of the mining methods of an existing operation and reclamation plan. This revision does not involve the addition of new areas to the permit. A revision is substantial if the changes clearly exceed the scope of activity authorized by the permit in effect at the time or measurably increases the potential affects on public health, safety and livelihood.

[(26)] (27) Ridge. A lengthened elevation of overburden created in the surface mining process.

[(27)] (28) Site or mining site. Any location or group of associated locations where minerals are being surface mined by the same operator.

[(28)] (29) Surety bond. A joint undertaking by the permittee as principal and the surety where the surety is obligated to pay Missouri the face amount of the bond should the reclamation not be completed by the permittee.

[(29)] (30) Surface mining. The mining of minerals for commercial purposes by removing the overburden lying above natural deposits of the minerals, and mining directly from the natural deposits exposed and shall include mining of exposed natural deposits of these minerals over which no overburden lies and, after August 28, 1990, the surface effects of underground mining operators for these minerals.

[(30)] (31) Unconsolidated material. Material which can be removed and handled by normal construction equipment without blasting.

[(31)] (32) Violation.

(A) Major *[V]*violation. The violation poses a high likelihood of pollution, creation of health or safety hazard or public nuisance; or the actions have or may have a substantial adverse effect on the purposes of or procedures for implementing the Land Reclamation Act and its corresponding regulations or a combination of these.

(B) Minor *[V]*violation. The violation poses a low likelihood of pollution, creation of health or safety hazard or public nuisance; or the actions have or may have a low adverse effect on the purposes of or procedures for implementing the Land Reclamation Act and its corresponding regulations or it has a minor potential for

harm and a minor deviation from the requirements of the law and regulations or a combination of these.

AUTHORITY: sections 444.765, 444.767[, RSMo Supp. 1993] and 444.784, RSMo [Supp. 1990] 1994. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed Jan. 2, 1992, effective Aug. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed May 3, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities an estimated \$63,000 annually in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Environmental Quality, Land Reclamation Program, Larry Coen, Staff Director, P.O. Box 176, Jefferson City, MO 65102, (573) 751-4041. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 10 - DEPARTMENT OF NATURAL RESOURCES

Division: Industrial Minerals Fee Increase

Chapter: 10--Permit and Performance Requirements for Industrial Mineral Open Pit and In-Stream Sand and Gravel Operations

Type of Rulemaking: Proposed Increase Application Fees

Rule Number and Name: 10 CRS 40-10.100 (5)

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the Proposed Rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Operations outside the geographical boundary of a county will be required to obtain permits for each county of operations. This change will affect 15 Sand and Gravel operations less than 5000 tons annually (Small operations) and 120 operations (Large operations).	Industrial Minerals Mining Companies.	Approximately 15 permits for small operations would be required and this would cost \$3,000 (15*\$200) and 120 large operations would require permits for a cost of \$60,000(120*\$500). The total cost of this change would be \$63,000.

The following list is based on the Standard Industrial Code. The list provides an extensive summary of classes.

SIC Code Commercial or Industrial Classification Number of Facilities

INDUSTRIAL MINERALS MINING

135

III. WORKSHEET

(5) 1. This new definition for an application would limit any operations by a permit holder to individual operations on that permit to a geographical county boundary. Any operations outside that geographical county boundary would require a separate permit for sites within each country boundary.

IV. ASSUMPTIONS

11. The original 10 CSR 40-10.100 was filed on August 2, 1991 and became effective on February 6, 1992.

2. 15 small sand and gravel operations and 120 large operation would be affected by this rule change (addition).

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming**

PROPOSED RULE

11 CSR 45-5.075 Payout Percentage for Progressive Table Games

PURPOSE: This rule establishes minimum payout percentages for progressive wagers on table games.

Table games that include progressive jackpots shall include a progressive meter, visible to the public, set at a rate of progression of no less than seventy percent (70%) distribution to the player and no more than a thirty percent (30%) distribution to the Class A licensee. If any part of the distribution to the progressive jackpot(s) is being used to fund a secondary jackpot, visible signage informing players of this supplemental distribution must be placed in the immediate area of the table. The existence of progressive jackpots and the distributions to those jackpots shall be set forth in the "rules of the game" within a licensee's internal controls for each game having a progressive jackpot(s). Any table game not meeting this distribution requirement shall be deemed an unauthorized gambling game.

AUTHORITY: sections 313.004, 313.805, RSMo 1994 and 313.807, RSMo. Supp. 1999. Original rule filed May 10, 2000.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than \$500 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Gaming Commission, P.O. Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for July 17, 2000, at 1:30 p.m., at the Missouri Gaming Commission, 3417 Knipp Drive, Jefferson City, Missouri.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 75—Peace Officer Standards and Training
Program
Chapter 6—Minimum Standards for Training**

PROPOSED AMENDMENT

11 CSR 75-6.020 Requirements for Trainee Attendance and Performance. The Department of Public Safety is amending section (2) of this rule.

PURPOSE: This amendment updates basic training requirements and curriculum.

(2) To receive credit for successful completion of [the] any basic training course, the trainee must achieve no less than a seventy (70%) final overall grade average on all written tests or no less than a score of sixty percent (60%) on any single test. A trainee who achieves a score of less than sixty percent (60%) on any single test can be given the opportunity to retake the test. **In addition, to successfully complete a basic training course of six hundred (600) hours or above, the trainee must pass the physical training requirements as outlined in the six hundred (600)-hour POST mandated objectives.**

AUTHORITY: section 590.120, RSMo [1994] Supp. 1999. Original rule filed Aug. 12, 1980, effective Nov. 13, 1980. For intervening history, please consult the *Code of State Regulations*. Amended: Filed May 4, 2000.

PUBLIC COST: This proposed amendment will not cost the state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Chris Egbert, POST Program, Missouri Department of Public Safety, P.O. Box 749, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 75—Peace Officer Standards and Training
Program
Chapter 6—Minimum Standards for Training**

PROPOSED AMENDMENT

11 CSR 75-6.030 Procedures for Certifying Basic Training Courses. The Department of Public Safety is amending sections (4) and (6) of this rule.

PURPOSE: This amendment updates basic training requirements and curriculum.

(4) The following peace officer and reserve officer one hundred twenty (120)-hour basic training course core curriculum has been established by the commission and is subject to revision as authorized under section (3). The one hundred twenty (120)-hour length of the basic training course shall be used exclusively for classroom and range instruction. Orientation, critiques, evaluations, administrative functions and graduation ceremonies shall be conducted in addition to the one hundred twenty (120) hours of classroom and range instruction (see Curricula Overview Chart **which is incorporated by reference**).

(6) The following peace and reserve officer four hundred and seventy (470)- **and six hundred (600)-hour** basic training course core curriculum has been established by the commission and is subject to revision as authorized under section (3). The four hundred and seventy (470)-hour length of basic training shall be used exclusively for classroom and range instruction. **The six hundred (600)-hour length of basic training shall be used exclusively for classroom, range instruction, physical training and practical exercises.** Orientation, critiques, evaluation, administration functions and graduation ceremonies shall be conducted in addition to the four hundred and seventy (470) hours of classroom and range instruction **and the six hundred (600) hours of classroom, range instruction, physical training, and practical exercises** (see Curricula Overview Chart).

AUTHORITY: section 590.120, RSMo 1994. Original rule filed Aug. 12, 1980, effective Nov. 13, 1980. For intervening history, please consult the *Code of State Regulations*. Amended: Filed May 4, 2000.

PUBLIC COST: This proposed amendment will not cost the state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Chris Egbert, POST Program, Missouri Department of Public Safety, P.O. Box 749, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

CODES		CURRICULA OVERVIEW	BAILIFF	64 HRS	120 HRS	180 HRS	300 HRS	170 HRS	470 HRS	130 HRS	600 HRS
		ADMINISTRATIVE PROCEDURES			1	3	3	9	27		27
O5		Orientation/Rules and Regulations				2	2	1	1		1
O5A		Basic Study Skills and Notetaking			1	1	1	1	2		2
		Exams						7	24		24
		LEGAL STUDIES	7	8	32	10	52	7	59	16	75
		Constitutional Law									
2I		Introduction to the Legal Blocks			2		2		2		2
2C		The Criminal Process					1		1		1
2F		Rules of Evidence			4		2		2		2
2J		Admissions/Confessions/Miranda			2		4		4	1	5
2K		Contact/Detention/Arrest			4		4		4		4
2I		Prisoner Rights and Privileges				2	2		2		2
2E		Searches, Seizures, and the Search Warrant	2		2		2		2		2
2M		Non-Fourth Amendment Seizures					1	1	2		2
2N		Stop and Frisk					1		1		1
2P		Search Incident to Arrest					2		2	1	3
2Q		Searches and Seizures Without a Warrant			2		2	1	3	1	4
2R		Peace Officer Liability	1				1		1	1	2
CLA		Criminal/Constitutional Law Update		4							
2B		Court Organization & Procedure	2		2						
2H		Courtroom Demeanor			2						
		Missouri Statutory Law									
MSA		Criminal Code Overview					1		1		1
2S		General Provisions						2	2		2
2O		Justification - Use of Force	2				2		2	2	4
MSB		Criminal Statutes			9	2	13	2	15	6	21
2U		Civil Process		4		4	4		4		4

CODES	CURRICULA OVERVIEW	BAILIFF	64 HRS	120 HRS	180 HRS	300 HRS	170 HRS	470 HRS	130 HRS	600 HRS
	Traffic Law									
3G	Complaint and Summons			3	2	2	1	3	1	4
3H	Registration and Licensing					2		2	1	3
3I	Traffic and Vehicle Equipment Regulations					4		4	2	6
	INTERPERSONAL PERSPECTIVES	6	18	31	28	30	38	92	4	96
3K	Ethics and Professionalism	1		1		2	2	4		4
DV	Domestic Violence							30		30
6A	Crisis Intervention/Domestic Violence			26	6	6	20	26		26
6M	Child Abuse & Neglect				4	4		4		4
HB	Human Behavior			1						
6I	Tactical Communications	4	6	1			8	8		8
VJ	Verbal Judo				10	6				
6J	Communication Obstacles		4			4	2	6		6
6K	Cultural Diversity		4	1	4	4		4		4
6L	Community Problem Solving			1			2	2		2
ICP	Crime Prevention						2	2		2
DAB	Dealing with Aggressive Behavior								4	4
ISP	Suicide Prevention	1								
6P	Dealing With Death		2		2	2		2		2
6Q	Stress Management		2		2	2		2		2
6R	Health, Fitness, and Nutrition						2	2		2
	TECHNICAL STUDIES	37	8	58	82	145	67	198	36	234
	Patrol			12	24	38	13	51	6	57
6S	Introduction - Preparation for Duty					2	1	3		3
6T	Service Duties of the Peace Officer			3		3		3		3
5B	Radio Communication Procedures			1		1		1		1
7AA	Preventive Patrol						2	2		2
7BB	Field Interviews				4	4		4		4

CODES	CURRICULA OVERVIEW	BAILIFF	64 HRS	120 HRS	180 HRS	300 HRS	170 HRS	470 HRS	130 HRS	600 HRS
6C	Mechanics of Arrest and Control			4		4		4	2	6
7O	Search of Persons / Vehicles					4		4	2	6
6B	Vehicle Stops			2	8	6		6	2	8
7DD	Day vs. Night Patrol						1	1		1
7EE	Emergency Response / Building Searches				8	8		8		8
7FF	Gangs, Transients and Organized Crime						4	4		4
7GG	Civil Disturbance Response						4	4		4
DPC	Disturbance and Prowler Calls			2						
7HH	Survival Mentality				4	2		2		2
7H	Hazardous Materials					4		4		4
DAR	Introduction to DARE						1	1		1
	Courtroom Management-Bailiff	25								
CB1	First Response to Hostage Situations	2								
CB2	High Threat Trials	4								
CB3	Prisoner Movement and Use of Restraints	3								
CB4	Service of Court Process/Orders of Protection	1								
CB5	Basic Security Issues in the Court	4								
CB6	Prisoner Transportation	2								
CB7	Jury Procedures	3								
CB8	Courtroom Evacuation	2								
P1	Physical and Electronic Security Aids	1								
CM6	Signs and Symptoms of Chemical Dependency	1								
CM9	Explosives Recognition and Search Techniques	2								
	Jail Population Management		8		6	8		8		8
4P	Processing and Documentation Procedures		4		3	4		4		4
4Q	Basic Security Principles		4		3	4		4		4

CODES	CURRICULA OVERVIEW	BAILIFF	64 HRS	120 HRS	180 HRS	300 HRS	170 HRS	470 HRS	130 HRS	600 HRS
	Traffic Accident and Law Enforcement			3	11	16	6	22	8	30
3J	STARS/Accident Report Writing and Diagramming				6	6		6		6
3B	Accident Investigation			2		4		4		4
4T	Introduction to Traffic RADAR						2	2		2
4U	DWI Investigation and Reporting				5	5	3	8	8	16
3C	Traffic Control and Direction			1		1	1	2		2
	Criminal Investigation	1		27	13	35	7	42	12	54
4W	Introduction					1	1	2		2
4X	Crime Scene Processing and Investigation			6	8	8	4	12		12
4H	Fingerprint Evidence			2	5	5	1	6		6
4I	Interrogation Process			3		3		3	2	5
4L	Informant Use						1	1		1
4M	Case and Trail Preparation					2		2		2
	County and Municipal Offense Investigations					16		16	10	26
CM1	Property Crime Offense Investigations									
CM2	Theft Offense Investigations									
CM3	Burglary Offense Investigations			3						
CM4	Assault Investigations			1						
CM5	Robbery Offense Investigations			1						
4E	Death Investigations			3						
4O	Introduction to Drug Identification and Investigations	1		3						
4F	Sexual Offense Investigations			3						
CM7	Bad Check Investigations									
4B	Auto Theft Investigations			2						
CM8	Criminal Intelligence									
7K	Arson and Explosives Investigations									
	Report Writing	1		5	24	24	3	27	10	37
5D	Memoranda				1	1		1		1

CODES	CURRICULA OVERVIEW	BAILIFF	64 HRS	120 HRS	180 HRS	300 HRS	170 HRS	470 HRS	130 HRS	600 HRS
5E	Introduction to Report Writing			4	3	3	1	4		4
5F	Interviewing Skills				4	4		4		4
5G	Report Writing Exercises				16	16		16	10	26
5H	Criminal History Reporting			1			2	2		2
	Juvenile Justice and Procedures	1		3		8		8		8
7A	Introduction, Jurisdiction and Certification					2		2		2
7H	Judicial Custody	1				2		2		2
7JJ	Juvenile Interrogation / Interviews					1		1		1
7KK	Fingerprinting and Lineups					1		1		1
7LL	Related Missouri Statutes			3		2		2		2
	First Aid (First Responder)	9		8	4	12	40	40		40
7MM	DPS-Approved First Responder Course	4					40	40		40
7NN	CPR	4		4		4				
7OO	Aids and Other Blood Borne Pathogens	1			4	4				
7PP	General First Aid Introduction			4		4				
	SKILL DEVELOPMENT	10	30	23	58	70	52	124	74	198
	Defensive Tactics	10	18	4	22	29	6	36	10	46
7QQ	Concepts of Defensive Tactics	8	6		2	3	6	3		3
7RR	Handcuffing and Restraining Devices			1	4	4		6		6
7SS	Control Techniques		4	1	3	4		6		6
7TT	Active Defensive Measures		8	1	3	4		6		6
7UU	Intermediate Weapons				6	7		7		7
7VV	Weapons Retention and Disarming			1	4	5		5		5
OS	Officer Survival	2								
	Exam / Practical Exam					3		3		3
GFT	Ground Fighting Techniques								6	6
UFS	Use of Force Scenarios								4	4
	Firearms		8	19	35	40	16	66	10	66

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 15—Division of Aging
Chapter 4—Older Americans Act**

PROPOSED AMENDMENT

13 CSR 15-4.240 Nutrition Service Requirements. The Division of Aging is amending sections (6) and (11).

PURPOSE: This amendment will alleviate the burden of repetitious paperwork for service recipients whose health status is chronic but stable, and will assure the safety of persons who receive congregate and/or home-delivered meals when a food-borne illness is suspected.

(6) Eligibility of individuals to receive nutrition services shall be determined as follows:

(B) Any person aged sixty (60) years or over who is homebound by reason of illness, incapacitating disability or is otherwise isolated shall be determined eligible for home-delivered nutrition services. Occasional escorted trips from the home for medical or other necessary services will not affect the individual's eligibility for home-delivered meals. The following conditions shall be met:

1. The area agency shall require *[each service provider to assess/ an assessment of]* the individual's eligibility for home-delivered nutrition services prior to initiation of the service and assess the individual's need for *[continuing the service at least each six (6) months] continued service at least annually* after that. In emergency situations, home-delivered meals may be delivered for a maximum of five (5) days prior to the initial assessment of eligibility; and

2. The area agency shall develop written criteria by which to determine if the spouse **and**/or primary caregiver who resides in the home, regardless of **their** age or condition of the spouse, may receive a home-delivered meal. The criteria developed shall assure that the receipt of the meal by the spouse **and**/or caregiver is in the best interest of the homebound older person;

(C) *[Handicapped or disabled individuals] Persons with disabilities* under sixty (60) years of age who reside in housing facilities occupied primarily by the elderly at which congregate nutrition services are provided may receive congregate nutrition services. Any person meeting these requirements also may be eligible to receive home-delivered nutrition services provided the procedures of paragraph (6)(B)2. are followed; and

(D) Under the Social Services Block Grant (SSBG), *[handicapped or disabled adults] persons with disabilities* under sixty (60) years of age who do not reside in housing facilities occupied primarily by the elderly may be eligible to receive congregate nutrition services. Any person meeting these requirements also may be eligible to receive home-delivered nutrition services under SSBG provided procedures in paragraph (6)(B)2. are followed.

(11) The area agency shall report the occurrence or suspicion of a food-borne illness to the appropriate health authorities and the division *[according to procedures established by the division]*. **The area agency shall cooperate with health authorities and keep the division informed of the investigation status as well as provide notice of resolution.**

AUTHORITY: section 660.050, RSMo [Supp. 1990] Supp. 1999. This rule was previously filed as 13 CSR 15-6.145. Original rule filed Jan. 6, 1986, effective April 30, 1986. Amended: Filed Feb. 17, 1988, effective June 15, 1988. Amended: Filed June 3, 1991, effective Oct. 31, 1991. Amended: Filed May 12, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Aging, Richard C. Dunn, Director, P.O. Box 1337, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 15—Division of Aging
Chapter 7—Service Standards**

PROPOSED AMENDMENT

13 CSR 15-7.005 Definitions. The Division of Aging is amending sections (1), (3), (11) and (15); deleting section (2) renumbering sections (3)–(12); and adding a new section (12).

PURPOSE: This amendment corrects terminology to agree with federal program title guidelines and clarifies the designation of home and community based services.

(1) Access services—A category of services which facilitates access to and utilization of other services. Access services may include transportation, outreach, *[care coordination]* **case management**, and information and *[referral]* assistance.

[[2] Alternative services—Services offered to the elderly in a noninstitutional setting.]

[[3]](2) [Care coordination] Case management—A service which ensures that individuals with chronic or acute care needs are assessed and provided with a comprehensive and coordinated service program designed to meet those assessed needs.

[[4]](3) Caterer—A restaurant, hospital, school or commercial organization which prepares meals under contract (usually a fixed price per meal contract).

[[5]](4) Center—Any facility regardless of terminology used, that is, senior center, congregate nutrition center, nutrition site, supportive services center, satellite center or site or multipurpose senior center, that is utilized to provide one (1) or more services to older persons.

[[6]](5) Congregate nutrition services—The provision of nutrition services to older persons in an approved center.

[[7]](6) Contributions—Money or food stamps (for meals only) given voluntarily and confidentially toward the cost of a service received.

[[8]](7) Division—The Division of Aging of the Missouri Department of Social Services.

[[9]](8) Economic need, greatest—The need resulting from an income level at or below the poverty threshold established by the Office of Management and Budget.

[[10]](9) Escort—A person designated by the service provider, or the recipient, who gives physical assistance to service recipients with functional impairments.

[[11]](10) Follow-up—[Recontracting] Recontacting the inquirer or agency/organization to whom the referral was made to assure if contact was made or if further services are required.

[(12)] (11) Frail elderly—Older persons having a physical or mental disability, including having Alzheimer's disease or a related disorder with neurological or organic brain dysfunction, that restricts the ability of the individual to perform normal daily tasks or which threatens the capacity of the individual to live independently.

(12) Home and community services—Services offered to eligible adults in a non-institutional setting.

(15) Information and *[referral]* assistance—Providing a prompt, accurate and pertinent response to an inquiry, which may include directing the person to the appropriate resource.

AUTHORITY: section 660.050, RSMo [1994] Supp. 1999. Original rule filed Jan. 6, 1986, effective April 30, 1986. Amended: Filed Feb. 17, 1988, effective June 15, 1988. Amended: Filed June 3, 1991, effective Oct. 31, 1991. Amended: Filed May 12, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Aging, Richard C. Dunn, Director, P.O. Box 1337, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 13—DEPARTMENT OF SOCIAL SERVICES Division 15—Division of Aging Chapter 7—Service Standards

PROPOSED AMENDMENT

13 CSR 15-7.060 Nutrition Service Standards. The Division of Aging is amending sections (4), (6), (7), (8), (9), (10), (13), (14) and (15). The division is also deleting two of the three forms (Division of Aging Menu Plan and Menu Substitutions for Special Diets) which appear at the end of the rule.

PURPOSE: This amendment is necessary to ensure the safety of frail elderly persons by requiring safe food temperatures, adequate nutritional content of meals, and documentation of various food service issues where appropriate. It will also alleviate the burden of repetitious paperwork for recipients with chronic, but stable, health concerns.

(4) Recordkeeping. The following additional records shall be maintained by nutrition service providers:

(A) Daily record *[of signatures of nutrition service recipients.]* documenting persons who receive meals, both congregate and home-delivered, following a method developed by the area agency and approved by the division;

[1. The nutrition provider shall maintain the congregate service sign-in sheet in a convenient location to assure that each service recipient signs for each meal.]

[2. The nutrition provider shall assure that home-delivered meals are signed for daily by the service recipient.]

[3. If the service recipient cannot or will not sign his/her name, the recipient's representative or another individual designated by the senior center administrator shall sign the service recipient's name as well as his/her name.

Service recipient records shall document why the recipient will not or cannot sign;]

(6) Equipment Requirements.

(A) Whether the senior center is catered or has an on-site food preparation kitchen, adequate equipment shall be available to keep refrigerated foods below forty-*[five]* one degrees Fahrenheit (*[45]* 41°F), heated foods above one hundred forty degrees Fahrenheit (140°F) and frozen foods at or below zero degrees Fahrenheit (0°F).

(7) Menu Planning Requirements.

(A) *[Each meal served shall contain at least one-third (1/3) of the current recommended dietary allowances (RDA) as established by the Food and Nutrition Board of the National Academy of Sciences—National Research Council.]* If one (1) meal per day is served, it shall contain a minimum thirty-three and one-third percent (33 1/3%) of the daily Recommended Dietary Allowance (RDA) as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. A minimum of sixty-six and two-thirds percent (66 2/3%) of the RDA shall be provided if two (2) meals are served, and one hundred percent (100%) of the RDA shall be provided if three (3) meals are served.

(B) A twenty to twenty-eight (20-*[28]*-) day menu cycle shall be developed to be repeated for a three (3)-month period *[using the official menu form provided by the division]*. Suggestions from service recipients shall be solicited regarding menu choices.

(F) Menus shall conform to the meal patterns and principles of menu planning provided by the division. **Refer to menu plan at the end of this rule which is incorporated by reference.**

(8) Special menu requirements are as follows:

(F) A diet prescription *[shall]* may be obtained for persons receiving home-delivered special meals. *[The]* Any prescription on file shall be kept current and shall be reviewed at least annually with the service recipient's physician;

(9) Requirements for handling prepared foods are as follows:

(A) A two (2) ounce separate sample *[portion]* of each potentially hazardous food item served shall be refrigerated and kept at least seventy-two (72) hours. *[It]* Sample(s) shall be available for analysis by the Department of Health if a food-borne illness is suspected;

(B) Potentially hazardous food which has been held at one hundred forty degrees Fahrenheit (140°F) or higher over four (4) hours or between forty-*[five]* one degrees and one hundred forty degrees Fahrenheit (*[45]* 41°F-140°F) for two (2) hours and any prepared food that has lost its quality shall not be served and shall be destroyed;

(D) The proper equipment shall be used to maintain hot foods at or above one hundred forty degrees Fahrenheit (140°F) and cold foods at or below forty-*[five]* one degrees Fahrenheit (*[45]* 41°F) while serving. Hot and cold food temperatures shall be checked immediately prior to service and recorded *[at least twice a week]* daily. Records must be kept for six (6) months at the center;

(E) When cooling, food shall be placed no more than two inches (2") deep in a container, covered and immediately placed in the refrigerator or freezer so it will cool to forty-*[five]* one degrees Fahrenheit (*[45]* 41°F) or below as rapidly as possible. Once food is cooled to forty-*[five]* one degrees Fahrenheit (*[45]* 41°F) or below, it may be stored in a container more than two inches (2") deep;

(F) When transporting prepared foods, the following procedures shall be used:

1. Hot food shall be delivered within three and one-half (3 1/2) hours following end preparation time. This limit includes the time required for packaging foods by the caterer, transporting to the centers, holding time at the center, packaging meals for home-delivered meal recipients and transporting meals to the home; and

2. Hot foods delivered to the center shall be at a minimum temperature of one hundred forty degrees Fahrenheit (140°F) and cold foods shall be at a maximum temperature of forty-~~/five/~~ **one** degrees Fahrenheit (~~/45/~~ **41**°F). A daily record of the delivery time and temperature of the food when received shall be kept at each center. Records must be kept for six **(6)** months at the center;

(10) Food Storage Requirements for All Foods, Including USDA Commodities.

(D) All refrigerated foods shall be maintained at **or** below forty-~~/five/~~ **one** degrees Fahrenheit (~~/45/~~ **41**°F);

(13) Nutrition service providers shall—

(B) Coordinate activities with the Missouri Division of Family Services to facilitate participation of eligible persons in the Food Stamp Program and assist service recipients in taking advantage of the benefits available to them under the Food Stamp Program. All centers ~~/shall/~~ **may** be authorized to accept food stamps; and

(14) Senior Centers.

(C) Each senior center shall provide—

1. Services to older persons at least five (5) days per week with sufficient hours to meet community needs. *If open less than six (6) hours per day, the division shall be informed of the hours of operation and the reason(s) fewer hours are justified*;

2. Hot or other appropriate meals at least once a day, five (5) or more days a week;

3. At a minimum, an average of fifty (50) meals a day at each senior center cooking on-site;

4. A variety of supportive services;

5. An information area with a bulletin board, display rack or other method of posting information which is easily accessible and well-lighted. Notices should be attractive, easy to read and placed within eye level;

6. An easy-to-read posted monthly activities calendar in area which is highly visible and accessible to service recipients; and

7. A posted, attractive, easy-to-read, weekly menu in a conspicuous location **in** the dining room on Friday of the week prior to service. *[The certified menu on the official menu form shall be posted in the kitchen.]*

(15) Home-delivered meals service providers shall—

(C) Assess and document **an** individual's eligibility to receive home-delivered meals prior to initiation of the service and reassess the need for ~~/continuing the/~~ **continued** services at least ~~/each six (6) months after that/~~ **annually**. **A shorter eligibility period may be appropriate in certain circumstances, such as persons with short-term needs after illness or surgery.**

1. When referrals are received from the division, the division's assessment and reassessment of the service recipient will be sufficient documentation of eligibility. The service recipient's assessment card shall document that referral was received from the division and an assessment made by the division established eligibility for the home-delivered meal. The senior center shall then complete the forms necessary to obtain required client status information as defined by the area agency.

2. In emergency situations, home-delivered meals may be delivered for a maximum of five (5) days prior to the initial assessment of eligibility;

(E) Use insulated carriers to assure that foods delivered to home-delivered meal recipients are at the proper temperature, over one hundred forty degrees Fahrenheit (140°F) for hot food and

under forty-~~/five/~~ **one** degrees Fahrenheit (~~/45/~~ **41**°F) for cold food. Check and record the temperature of hot and cold food items delivered to the last recipient on each home-delivered meal route at least quarterly. All equipment used in transporting foods shall have smooth cleanable surfaces, be cleaned and sanitized daily or be disposable;

(F) Deliver hot foods to the service recipient within three and one-half (3 1/2) hours following end preparation time~~/;~~, **and record time home-delivered meal route was started and time last meal was delivered at least quarterly for each route;**

AUTHORITY: section 660.050, RSMo [1994] Supp. 1999. This rule was previously filed as 13 CSR 15-6.155. Original rule filed Jan. 6, 1986, effective April 30, 1986. Amended: Filed Feb. 17, 1988, effective June 15, 1988. Amended: Filed June 3, 1991, effective Oct. 31, 1991. Amended: Filed Nov. 14, 1991, effective March 9, 1992. Amended: Filed May 12, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Aging, Richard C. Dunn, Director, P.O. Box 1337, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 13—DEPARTMENT OF SOCIAL SERVICES Division 70—Division of Medical Services Chapter 4—Conditions of Recipient Participation, Rights and Responsibilities

PROPOSED AMENDMENT

13 CSR 70-4.051 Copayment for Pharmacy Services. The division proposes to amend subsection (2)(A).

PURPOSE: This rule is being amended to exempt 18-year-old recipients of medical assistance from the copayment requirement for drugs to conform with the terms and conditions of Missouri's federal Medicaid section 1115 Health Care Reform Demonstration.

(2) Services exempted from the copayment requirement for drugs are—

(A) Services to recipients under ~~/eighteen (18)/~~ **nineteen (19)** years of age;

AUTHORITY: sections [207.020] 208.152, 208.153 and [208.159] 208.201, RSMo [1986] 1994. This rule was previously filed as 13 CSR 40-81.055. Original filed April 14, 1982, effective July 11, 1982. Amended: Filed Oct. 13, 1983, effective Jan. 13, 1984. Amended: Filed May 15, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate. Should any future change result in costs greater than \$500, a revised fiscal note will be filed with the secretary of state.

PRIVATE COST: This proposed amendment will not cost private entities greater than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Division of Medical Services,

Director of Medicaid, 615 Howerton Court, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 40—State Auditor
Chapter 2—Rules Applying to State Agencies

PROPOSED AMENDMENT

15 CSR 40-2.031 Control of Fixed Assets. The state auditor is amending sections (1), (3), (4) and (7) and renumbering remaining sections.

PURPOSE: This amendment changes the threshold amounts for fixed asset items that need to be accounted for by state agencies as fixed assets. Other changes are made to clarify requirements. The state auditor has the authority to establish rules for the control of fixed assets by state agencies. This rule establishes the criteria for determining the property which must be controlled and the data which must be documented for each property item.

(1) Definitions.

(B) Fixed assets mean tangible real or personal property, with a useful life of *[more than one (1) year, obtained or controlled by a department as a result of past transactions, events or circumstances]* **at least two (2) years**. Fixed assets include land, **land improvements**, buildings, equipment, *[improvements or]* **and additions and betterments** to property *[, and major repairs to property which extend useful life or increase efficiency]*.

(C) *[Acquisition cost includes the purchase price, engineering charges, freight installation charges, site preparation and any other charges directly related to placing the item into service.]* The cost of a fixed asset item means the purchase price or construction cost, plus any ancillary charges necessary to place the asset in its intended location and condition for use. Ancillary charges include costs such as freight and transportation charges, site preparation expenditures, professional fees, and legal claims directly attributable to asset acquisition.

(3) All fixed assets *[obtained or controlled]* **acquired** by a department, whether *[obtained]* by purchase, **construction, lease-purchase**, donation or other means, are to be used for state business and not for personal benefit.

(4) *[However, only those]* **Those** items with a cost (or estimated fair value if actual cost is not available), *[of two hundred fifty dollars (\$250) at the time of acquisition and an estimated useful life of more than one (1) year]* **over the following threshold amounts** are required to be accounted for as fixed assets under this rule[.]:

(A) **Land—all parcels of land (no threshold amount).**

(B) **Land improvements—fifteen thousand dollars (\$15,000) or more.**

(C) **Buildings—fifteen thousand dollars (\$15,000) or more.**

(D) **Equipment—one thousand dollars (\$1,000) or more.**

(E) **Additions or betterments to buildings—fifteen thousand dollars (\$15,000) or more.**

(F) **Additions or betterments to equipment—one thousand dollars (\$1,000) or more.**

(5) If more than one (1) set of fixed asset requirements apply (for example, federal grant requirements) the more stringent set of requirements shall apply.

[[4]] (6) Each department shall ensure that controls are adequate over property items, with a cost under *[two hundred fifty dollars (\$250)]* **the threshold amounts**, that are considered attractive or easily pilfered. These sensitive items may include: audiovisual equipment, calculators, computers and accessories, dictating equipment, television sets, recorders and power tools. Each department shall identify its sensitive items, implement appropriate procedures for adequate control and perform annual inventories. The preferred method is to include these sensitive items on the fixed asset control system. Regardless of the method used, adequate accountability shall be provided. Property items under *[two hundred fifty dollars (\$250)]* **the threshold amounts** that are not considered sensitive should have a tag designating ownership (for example, "Property of Missouri State Highway Patrol") affixed to the item in a prominent location.

[[5]] (7) Each fixed asset item shall be identified by a sequential numbering system including a numbered tag or reasonable substitute physically attached to the item. If it is not possible to attach a tag (for instance, to land), a number shall be assigned to the item for control and identification purposes.

[[6]] (8) Each department shall keep fixed asset control records. These records shall be maintained by fund of acquisition and asset classification and shall contain the following data for each item: identification number; description of the item to include name, make, model and serial number, where appropriate; acquisition cost; date of acquisition *[if applicable]*; estimated useful life at date of acquisition; physical location in sufficient detail to readily locate the item; and method and date of disposition.

[[7]] (9) Each department shall perform an annual physical inventory of all fixed assets in its possession and reconcile this inventory with the fixed asset control records and with the prior annual physical inventory, accounting for all acquisitions and dispositions in the interim. Each department shall annually prepare a statement of changes in fixed assets to summarize the transactions occurring during the fiscal year.

AUTHORITY: section 34.125, RSMo [1986] Supp. 1999. Original rule filed Jan. 16, 1978, effective April 13, 1978. Amended: Filed Aug. 16, 1979, effective Nov. 12, 1979. Amended: Filed Sept. 14, 1989, effective July 1, 1990. Amended: Filed May 4, 2000.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the State Auditor, Claire McCaskill, P.O. Box 869, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order or rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety-day period during which an agency shall file its Order of Rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the Proposed Rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 2—Health Requirements for Movement of
Livestock, Poultry, and Exotic Animals

ORDER OF RULEMAKING

By the authority vested in the state veterinarian under section 267.645, RSMo 1994, the state veterinarian hereby amends a rule as follows:

2 CSR 30-2.020 Movement of Livestock, Poultry and Exotic Animals Within Missouri **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 15, 2000 (25 MoReg 633). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 2—DEPARTMENT OF AGRICULTURE
Division 80—State Milk Board
Chapter 5—Inspections

ORDER OF RULEMAKING

By the authority vested in the State Milk Board under section 196.939, RSMo Supp. 1999, the board hereby amends a rule as follows:

2 CSR 80-5.010 Inspection Fees **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 15, 2000 (25 MoReg 357-359). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on April 6, 2000 at 11:00 a.m. in the conference room of the Missouri State Milk Board Office, 911 Leslie Boulevard, Jefferson City, Missouri. No comments were received during the public hearing. No written comments were received during the comment period.

Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 155—Office of Health Care Providers
Chapter 1—Certifying Entities

ORDER OF RULEMAKING

By the authority vested in the Division of Professional Registration under section 334.737, RSMo 1994, the division rescinds a rule as follows:

4 CSR 155-1.010 Certifying Entity—Respiratory Care Practitioners **is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on March 1, 2000 (25 MoReg 531). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 155—Office of Health Care Providers
Chapter 1—Certifying Entities

ORDER OF RULEMAKING

By the authority vested in the Division of Professional Registration under sections 334.737.2 and 334.737.4, RSMo 1994 and 334.740.3, RSMo Supp. 1999, the division rescinds a rule as follows:

4 CSR 155-1.020 Certifying Entity—All Occupational Therapists **is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on March 1, 2000 (25 MoReg 531). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 230—State Board of Podiatric Medicine
Chapter 2—General Rules**

ORDER OF RULEMAKING

By the authority vested in the State Board of Podiatric Medicine under sections 330.065, RSMo 1994 and 330.140 and 330.095, RSMo Supp. 1999, the board amends a rule as follows:

4 CSR 230-2.070 Fees is amended.

A notice of the proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2000 (25 MoReg 531–532). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 50—Missouri State Highway Patrol
Chapter 2—Motor Vehicle Inspection Division**

ORDER OF RULEMAKING

By the authority vested in the superintendent of the Missouri State Highway Patrol under section 307.360, RSMo 1994, the superintendent hereby amends a rule as follows:

11 CSR 50-2.080 Licensing of Inspector/Mechanics is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2000 (25 MoReg 554). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 50—Missouri State Highway Patrol
Chapter 2—Motor Vehicle Inspection Division**

ORDER OF RULEMAKING

By the authority vested in the superintendent of the Missouri State Highway Patrol under section 307.360, RSMo 1994, the superintendent hereby amends a rule as follows:

11 CSR 50-2.090 Inspection Station Operational Requirements is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2000 (25 MoReg 554). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 50—Missouri State Highway Patrol
Chapter 2—Motor Vehicle Inspection Division**

ORDER OF RULEMAKING

By the authority vested in the superintendent of the Missouri State Highway Patrol under section 307.360, RSMo 1994, the superintendent hereby amends a rule as follows:

11 CSR 50-2.100 Requisition of Inspection Stickers and Decals is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2000 (25 MoReg 554). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 50—Missouri State Highway Patrol
Chapter 2—Motor Vehicle Inspection Division**

ORDER OF RULEMAKING

By the authority vested in the superintendent of the Missouri State Highway Patrol under section 307.360, RSMo 1994, the superintendent hereby amends a rule as follows:

11 CSR 50-2.150 Brake Performance is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2000 (25 MoReg 554–555). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 50—Missouri State Highway Patrol
Chapter 2—Motor Vehicle Inspection Division**

ORDER OF RULEMAKING

By the authority vested in the superintendent of the Missouri State Highway Patrol under section 307.360, RSMo 1994, the superintendent hereby amends a rule as follows:

11 CSR 50-2.160 Brake Components is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2000 (25 MoReg 555). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 50—Missouri State Highway Patrol
Chapter 2—Motor Vehicle Inspection Division**

ORDER OF RULEMAKING

By the authority vested in the superintendent of the Missouri State Highway Patrol under section 307.360, RSMo 1994, the superintendent hereby amends a rule as follows:

11 CSR 50-2.290 Fuel System is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2000 (25 MoReg 555-556). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 50—Missouri State Highway Patrol
Chapter 2—Motor Vehicle Inspection Division**

ORDER OF RULEMAKING

By the authority vested in the superintendent of the Missouri State Highway Patrol under sections 307.360.2, RSMo 1994 and 307.375, RSMo Supp. 1999, the superintendent hereby amends a rule as follows:

11 CSR 50-2.320 School Bus Inspection is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2000 (25 MoReg 556). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 50—Missouri State Highway Patrol
Chapter 2—Motor Vehicle Inspection Division**

ORDER OF RULEMAKING

By the authority vested in the superintendent of the Missouri State Highway Patrol under section 307.360, RSMo 1994, the superintendent hereby amends a rule as follows:

**11 CSR 50-2.430 Verification of Homemade Trailers
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2000 (25 MoReg 556-557). No changes have been made in the text of the proposed amendment, however a correction has been made to the authority section and it is reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

AUTHORITY: section 307.360, RSMo 1994. Emergency rule filed Aug. 15, 1984, effective Sept. 1, 1984, expired Dec. 30, 1984. Original rule filed Sept. 12, 1984, effective Jan. 1, 1985. For intervening history, please consult the Code of State Regulations. Amended: Filed Feb. 1, 2000.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 50—Missouri State Highway Patrol
Chapter 2—Motor Vehicle Inspection Division**

ORDER OF RULEMAKING

By the authority vested in the superintendent of the Missouri State Highway Patrol under sections 301.190, RSMo Supp. 1999 and 307.360, RSMo 1994, the superintendent hereby amends a rule as follows:

**11 CSR 50-2.440 Vehicle Identification Number and Odometer
Reading Verification is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2000 (25 MoReg 557). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 80—Missouri State Water Patrol
Chapter 1—General Organization**

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Public Safety under section 650.005, RSMo Supp. 1999, the department amends a rule as follows:

**11 CSR 80-1.010 Organization and Methods of Operation is
amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2000 (25 MoReg 290). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 80—Missouri State Water Patrol
Chapter 2—Diver's Flag Regulations**

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Public Safety under section 650.005, RSMo Supp. 1999, the department amends a rule as follows:

11 CSR 80-2.010 Diver's Flag is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2000 (25 MoReg 290). No changes have been made

in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 80—Missouri State Water Patrol
Chapter 3—Skiing Standards**

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Public Safety under section 650.005, RSMo Supp. 1999, the department amends a rule as follows:

11 CSR 80-3.010 Ski Mirror is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2000 (25 MoReg 291). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 80—Missouri State Water Patrol
Chapter 3—Skiing Standards**

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Public Safety under section 650.005, RSMo Supp. 1999, the department amends a rule as follows:

11 CSR 80-3.020 Ski Jump is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2000 (25 MoReg 291). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 80—Missouri State Water Patrol
Chapter 4—Identification Numbers for Boats and Vessels**

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Public Safety under section 650.005, RSMo Supp. 1999, the department amends a rule as follows:

11 CSR 80-4.010 Display of Identification Numbers is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2000 (25 MoReg 291). No changes have been made in the text of the proposed amendment, so it is not reprinted here.

This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 80—Missouri State Water Patrol
Chapter 6—Boating Accident Reports**

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Public Safety under section 650.005, RSMo Supp. 1999, the department amends a rule as follows:

11 CSR 80-6.010 Reporting Requirements is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2000 (25 MoReg 292). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 80—Missouri State Water Patrol
Chapter 7—Expiration (Renewal) Stickers for Boats and Vessels**

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Public Safety under section 650.005, RSMo Supp. 1999, the department amends a rule as follows:

11 CSR 80-7.010 Display of Expiration (Renewal) Stickers is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2000 (25 MoReg 292). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 80—Missouri State Water Patrol
Chapter 8—Water Event Permit**

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Public Safety under section 650.005, RSMo Supp. 1999, the department amends a rule as follows:

11 CSR 80-8.010 Reporting a Cancellation or Change in Permit is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2000 (25 MoReg 292). No changes have been made in the text of the proposed amendment, so it is not reprinted here.

This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 23—Motor Vehicle Bureau**

ORDER OF RULEMAKING

By the authority vested in the director of revenue under sections 301.144, 301.449 and 301.451, RSMo Supp. 1999, the director amends a rule as follows:

12 CSR 10-23.100 Personalized License Plates is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2000 (25 MoReg 557-562). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 144.270, RSMo 1994, the director adopts a rule as follows:

12 CSR 10-110.910 Livestock is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2000 (25 MoReg 294-295). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received one letter of comment on this proposed rule.

COMMENT: The commentator suggested changing example (4)(a) to state all vaccines and animal bedding are exempt.

RESPONSE: The department disagrees with this comment. The statutes only exempt these items for certain animals, not all animals. No change was made to the proposed rule as a result of this comment.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 144.270, RSMo 1994, the director adopts a rule as follows:

12 CSR 10-110.920 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 1, 2000 (25 MoReg 295-296). Changes have been made in the text of the proposed rule and those sections are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS AND EXPLANATION OF CHANGE: The department received one letter of comment on this proposed rule. In Section (2), the definitions were changed to put the terms in alphabetical order.

COMMENT: The commentator suggested including herbicides in the definition of pesticides.

RESPONSE: The department disagrees with this comment. The statutes specifically include both terms independently. No change was made to the proposed rule as a result of this comment.

COMMENT: The commentator also suggested adding rodenticides, fungicides and fumigants to the definition of pesticides.

RESPONSE: The department disagrees with this comment. The definition states a pesticide is a chemical used to kill pests. This definition would include rodents. The definition of herbicide is a chemical used to destroy or inhibit the growth of plants, which would include fungus. No change was made to the proposed rule as a result of this comment.

COMMENT: The commentator suggested taking the term adjuvant out of the definition of pesticide and expanding the definition beyond what is included in the statutes.

RESPONSE: The department disagrees with this comment. The statutes specifically include adjuvant in the definition of pesticide. No change was made to the proposed rule as a result of this comment.

COMMENT: The commentator suggested adding plant growth regulators to the rule.

RESPONSE: The department disagrees with this comment. The statute does not include plant growth regulators as exempt. No change was made to the proposed rule as a result of this comment.

12 CSR 10-110.920 Sales of Grains, Seed, Pesticides, Herbicides and Fertilizers

(2) Definition of Terms.

(A) Herbicides—Chemical substances used to destroy or inhibit the growth of plants, especially weeds.

(B) Livestock—See 12 CSR 10-110.900.

(C) Pesticides—Chemicals used to kill pests, especially insects. Pesticides include adjuvants such as crop oils, surfactants, wetting agents and other pesticide carriers used to improve or enhance the effect of a pesticide and the foam used to mark the application of pesticides and herbicides for the production of crops, livestock or poultry.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

ORDER OF RULEMAKING

By the authority vested in the Missouri Health Facilities Review Committee under section 197.320, RSMo Supp. 1999, the committee amends a rule as follows:

19 CSR 60-50.300 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 14, 2000 (25 MoReg 206–207). Changes have been made in the text of the proposed amendment due to a ruling from the Joint Committee on Administrative Rules, and the entire text of the proposed amendment is reprinted here for clarification. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Comments were received from the Missouri Hospital Association, the St. Louis Area Business Health Coalition, the Missouri Association of Homes for the Aging, and the Missouri Radiological Society.

COMMENT: The inclusion of the capital value of land and buildings that have been previously incurred by the owner/operator in the definition of “health care facility expenditure” would result in re-counting the value of the land and buildings as expenditures when applying for a CON.

RESPONSE AND EXPLANATION OF CHANGE: The proposed changes to the definition for “applicant” in section (1) were not made due to a ruling from the Joint Committee on Administrative Rules that such changes were beyond the statutory authority of the Missouri Health Facilities Review Committee.

COMMENT: Clarification should be included in the definition of “predevelopment costs” that exempts the capital value of land and buildings from being counted as predevelopment costs when the capital value of the land and buildings was previously included for a CON.

RESPONSE AND EXPLANATION OF CHANGE: The proposed changes to the definition for “predevelopment costs” in renumbered section (13) were not made due to a ruling from the Joint Committee on Administrative Rules that such changes were beyond the statutory authority of the Missouri Health Facilities Review Committee.

COMMENT: Changing the definition of “applicant” to include both the owner and the lessee of any “asset” regardless of the relationship contravenes the CON law and is beyond the statutory authority granted to the Committee. The CON statute limits the need for a CON to only that person who proposes to develop or offer the new institutional service that exceeds one of the expenditure minimums. The focus of the CON law is on the expenditure, not the asset.

RESPONSE AND EXPLANATION OF CHANGE: The proposed changes to the definition for “applicant” in section (1) were not made due to a ruling from the Joint Committee on Administrative Rules that such changes were beyond the statutory authority of the Missouri Health Facilities Review Committee.

COMMENT: The proposed definition of “health care facility expenditure” would include land and acquisition costs for any existing land and buildings converted to medical use for the first time. This exceeds statutory authority and is contrary to the CON law.

RESPONSE AND EXPLANATION OF CHANGE: The new definition for “health care facility expenditure” in section (7) was modified due to a ruling from the Joint Committee on Administrative Rules to delete the word “for” after the words “in excess of \$150,000,” and to add the date “(06-99)” after the words “form 580-1863.”

COMMENT: The statutory definition of “predevelopment costs” does not include expenditures for land or buildings. The proposed addition of land and buildings to the Rules definition exceeds statutory authority.

RESPONSE AND EXPLANATION OF CHANGE: The proposed changes to the definition for “predevelopment costs” in renumbered section (13) were not made due to a ruling from the Joint Committee on Administrative Rules that such changes were beyond the statutory authority of the Missouri Health Facilities Review Committee.

COMMENT: The definition for “charity care” should add the following: “Charity care should be calculated at fixed plus variably cost of providing charity care services. This figure would be arrived at by multiplying charity care charges times the institution’s cost to charges ratio to arrive at charity care cost.”

RESPONSE: The Committee disagrees, and no change has been made as a result of this comment.

COMMENT: At the beginning of the subsection (3), add the phrase, “Except for facilities qualifying for bed expansion under §197.318.8.”

RESPONSE: The Committee disagrees, and no change has been made as a result of this comment.

COMMENT: At the beginning of subsections (4) through (11), add the phrase, “Except for facilities qualifying for bed expansion under §197.318.8.”

RESPONSE: The Committee disagrees, and no change has been made as a result of this comment.

19 CSR 60-50.300 Definitions for the Certificate of Need Process

(1) Applicant means all owner(s) and operator(s) of any new institutional health service.

(2) By or on behalf of a health care facility includes any expenditures made by the facility itself as well as capital expenditures made by other persons that assist the facility in offering services to its patients/residents.

(3) Charity care means uncompensated care given by a health care facility to indigent and medically indigent people as part of a written mission or policy, and it does not include accounts written off as “bad debts” or third party adjustments, including those for Medicare and Medicaid.

(4) Cost means:

(A) Price paid or to be paid by the applicant for a new institutional health service to acquire, purchase or develop a health care facility or major medical equipment; or

(B) Fair market value of the health care facility or major medical equipment as determined by the current selling price at the date of the application as quoted by builders or architects for similar facilities or normal suppliers of the requested equipment.

(5) Generally accepted accounting principles pertaining to capital expenditures include, but are not limited to—

(A) Expenditures related to acquisition or construction of capital assets;

(B) Capital assets are investments in property, plant and equipment used for the production of other goods and services approved by the committee; and

(C) Land is not considered a capital asset until actually converted for that purpose with commencement of above-ground construction approved by the committee.

(6) Health care facility means any premises as defined in section 197.305(8), RSMo.

(7) Health care facility expenditure includes the capital value of new construction or renovation costs, architectural/engineering

fees, equipment not in the construction contract, land acquisition costs, consultants'/legal fees, interest during construction, predevelopment costs as defined in section 197.305(13), RSMo, in excess of \$150,000, any existing land and building converted to medical use for the first time, and any other capitalizable costs as listed on the "Proposed Project Budget" form MO 580-1863 (06-99).

(8) Health maintenance organizations means entities as defined in section 354.400(6), RSMo, except for activities directly related to the provision of insurance only.

(9) Interested party means any licensed health care provider or other affected person who has expressed an interest in the Certificate of Need (CON) process or a CON application.

(10) Major medical equipment means any device or collection of devices and startup costs acquired over a twelve (12)-month period, including equipment, shipping, installation, supplies, and taxes, with an aggregate cost in excess of the expenditure minimum, when the project is intended to provide imaging, diagnostic, treatment, preventive or other health services.

(11) Nonsubstantive project includes, but is not limited to, at least one (1) of the following situations:

(A) An expenditure which is required solely to meet federal or state requirements;

(B) The construction or modification of nonpatient care services, including parking facilities, sprinkler systems, heating or air-conditioning equipment, fire doors, food service equipment, building maintenance, administrative equipment, telephone systems, energy conservation measures, land acquisition, medical office buildings, and other projects of a similar nature;

(C) The acquisition of minor x-ray units, computed tomography units, mammography units, and fluoroscopy units, adult day care centers, hospices, and home health care services; or

(D) Expenditures for construction, equipment, or both, due to an act of God or a normal consequence of maintenance, but not replacement, of health care facilities, beds, or equipment.

(12) Offer, when used in connection with health services, means that the applicant asserts having the capability and the means to provide and operate the specified health services.

(13) Predevelopment costs mean expenditures as defined in section 197.305(15), RSMo including consulting, legal, architectural, engineering, financial and other activities directly related to the proposed project, but excluding the application fee for submission of the application for the proposed project.

(14) Related organization means an organization that is associated or affiliated with, has control over or is controlled by, or has any direct financial interest in, the organization applying for a project including, without limitation, an underwriter, guarantor, parent organization, joint venturer, partner or general partner.

(15) Service area means:

(A) A review area which is the geographic region within the fifteen (15)-mile radius of the proposed site; and

(B) A geographic region in excess of the fifteen (15)-mile review area appropriate to the proposed service, documented by the applicant and approved by the committee.

This section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs and other items required to be published in the *Missouri Register* by law.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 100—Division of Credit Unions**

**ACTIONS TAKEN ON
APPLICATIONS FOR NEW GROUPS OR
GEOGRAPHIC AREAS**

Pursuant to section 370.081(4), RSMo Supp. 1999, the Director of the Missouri Division of Credit Unions is required to cause notice to be published that the director has either granted or rejected applications from the following credit unions to add new groups or geographic areas to their membership and state the reasons for taking these actions.

The following application has been granted. This credit union has met the criteria applied to determine if additional groups may be included in the membership of an existing credit union and have the immediate ability to serve the proposed new groups or geographic areas. The proposed new groups or geographic areas meet the requirements established pursuant to 370.080(2), RSMo Supp. 1999.

Credit Union	Proposed New Group or Geographic Area
Century Credit Union 1540 Lemay Ferry Road St. Louis, MO 63125	Persons working or residing in Zip Code 63052

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 100—Division of Credit Unions**

**APPLICATIONS FOR NEW GROUPS OR
GEOGRAPHIC AREAS**

Pursuant to section 370.081(4), RSMo Supp. 1999, the Director of the Missouri Division of Credit Unions is required to cause notice to be published that the following credit unions have submitted applications to add new groups or geographic areas to their membership.

Credit Union	Proposed New Group or Geographic Area
West Community Credit Union 2345 South Brentwood St. Louis, MO 63144	Anyone living or working in the cities of Overland (63114), Olivette (63132), Crestwood (63126), Sunset Hills (63127), Des Peres (63131), Creve Coeur (63141), Ballwin (63011), Maryland Heights (63146 and 63043), Chesterfield (63017 and 63005) and Manchester (63021).

NOTICE TO SUBMIT COMMENTS: *Anyone may file a written statement in support of or in opposition to any of these applications. Comments shall be filed with: Director, Division of Credit Unions, P.O. Box 1607, Jefferson City, MO 65102. To be considered, written comments must be submitted no later than ten business days after publication of this notice in the Missouri Register.*

**OFFICE OF ADMINISTRATION
Division of Purchasing**

BID OPENINGS

Sealed Bids in one (1) copy will be received by the Division of Purchasing, Room 580, Truman Building, P.O. Box 809, Jefferson City, MO 65102, telephone (573) 751-2387 at 2:00 p.m. on dates specified below for various agencies throughout Missouri. Bids are available to download via our homepage: <http://www.state.mo.us/oa/purch/purch.htm>. Prospective bidders may receive specifications upon request.

B3Z00205 Temporary Clerical Services 6/15/00;
B3Z00206 Temporary Laborer Services 6/16/00;
B2E00092 Tape Drive Maintenance 6/19/00;
B1Z00389 Chemical Products Supply Items 6/19/00;
B1Z00445 Calendar Pads/Bases 6/19/00;
B3Z00207 Court Reporting Services 6/19/00;
B1E00453 Maintenance: Aircraft 6/20/00;
B1E00473 Petri Dishes/Supplies 6/20/00;
B1Z00442 Steel Products 6/20/00;
B3Z00223 Homegoing Transportation Services 6/20/00;
B1E00364 Carpet Tiles-Truman Building 6/21/00;
B1Z00400 Security System 6/21/00;
B1Z00443 Paper: Bath Tissue & Towels 6/21/00;
B1Z00439 Dairy Products: Central MO 6/22/00;
B1Z00472 Office Supplies-Springfield Area 6/22/00;
B3Z00222 Abandoned Property Identification & Collection 6/22/00;
B3Z00218 Printing: Missouri Session Laws 6/26/00;
B3Z00164 Family Reunification Services 6/27/00;
B3Z00180 Medicaid Managed Care-Eastern Region 6/30/00;
B3Z00198 Physical, Occupational & Speech Therapies 6/30/00;
B3Z00216 Public Education Campaign, Children's Trust Fund 7/6/00;
B3Z00160 Conference Services: Columbia, Jefferson City, Lake Ozark 7/13/00;
B2Z00095 Project Management Training 8/8/00.

It is the intent of the State of Missouri, Division of Purchasing to purchase the following as a single feasible source without competitive bids. If suppliers exist other than the one identified, contact (573) 751-2387 immediately.

1.) PE Biosystems Maintenance and PE Biosystems Combination Kits, supplied by PE Biosystems.
2.) Women's & Minority Health Care Outreach Program, supplied by Missouri Primary Care Association.

1.) FATS System Software, supplied by FATS, Inc.
2.) Administration in Sexual Assault Prevention, supplied by Missouri Coalition Against Sexual Assault (MoCASA).

Joyce Murphy, CPPO,
Director of Purchasing

**Rule Changes Since Update to
Code of State Regulations**

This cumulative table gives you the latest status of rules. It contains citations of rulemakings adopted or proposed after deadline for the monthly Update Service to the *Code of State Regulations*, citations are to volume and page number in the *Missouri Register*, except for material in this issue. The first number in the table cite refers to the volume number or the publication year—23 (1998), 24 (1999) and 25 (2000). MoReg refers to *Missouri Register* and the numbers refer to a specific *Register* page, R indicates a rescission, W indicates a withdrawal, S indicates a statement of actual cost, T indicates an order terminating a rule, N.A. indicates not applicable and RUC indicates a rule under consideration.

Rule Number	Agency	Emergency	Proposed	Order	In Addition
OFFICE OF ADMINISTRATION					
1 CSR 10	State Officials' Salary Compensation Schedule				23 MoReg 2473
1 CSR 10-17.040	Office of Administration		25 MoReg 1062		24 MoReg 2535
	(Changed from 1 CSR 40-1.080)				
1 CSR 10-17.050	Office of Administration		25 MoReg 1062		
	(Changed from 1 CSR 40-1.070)				
1 CSR 20-5.010	Personnel Advisory Board		25 MoReg 1195		
1 CSR 20-5.020	Personnel Advisory Board		25 MoReg 1196		
1 CSR 40-1.010	Purchasing and Materials Management		25 MoReg 1059		
1 CSR 40-1.030	Purchasing and Materials Management		25 MoReg 1059		
1 CSR 40-1.050	Purchasing and Materials Management		25 MoReg 1060		
1 CSR 40-1.060	Purchasing and Materials Management		25 MoReg 1061		
1 CSR 40-1.070	Purchasing and Materials Management		25 MoReg 1062		
	(Changed to 1 CSR 10-17.050)				
1 CSR 40-1.080	Purchasing and Materials Management		25 MoReg 1062		
	(Changed to 1 CSR 10-17.040)				
DEPARTMENT OF AGRICULTURE					
2 CSR 10-5.005	Market Development	24 MoReg 2269			
2 CSR 30-2.020	Animal Health		25 MoReg 633		This Issue
2 CSR 60-1.010	Grain Inspection and Warehousing		24 MoReg 2755	25 MoReg 1157	
2 CSR 60-4.011	Grain Inspection and Warehousing		24 MoReg 2755	25 MoReg 1157	
2 CSR 60-4.040	Grain Inspection and Warehousing		24 MoReg 2755R	25 MoReg 1157R	
2 CSR 60-4.070	Grain Inspection and Warehousing		24 MoReg 2756	25 MoReg 1157	
2 CSR 60-4.110	Grain Inspection and Warehousing		24 MoReg 2756	25 MoReg 1157	
2 CSR 60-4.140	Grain Inspection and Warehousing		24 MoReg 2757	25 MoReg 1158	
2 CSR 60-4.150	Grain Inspection and Warehousing		24 MoReg 2758	25 MoReg 1158	
2 CSR 60-4.180	Grain Inspection and Warehousing		24 MoReg 2758	25 MoReg 1158	
2 CSR 60-5.010	Grain Inspection and Warehousing		24 MoReg 2759	25 MoReg 1158	
2 CSR 60-5.020	Grain Inspection and Warehousing		24 MoReg 2759R	25 MoReg 1158R	
			24 MoReg 2759	25 MoReg 1158	
2 CSR 60-5.030	Grain Inspection and Warehousing		24 MoReg 2760R	25 MoReg 1159R	
2 CSR 60-5.040	Grain Inspection and Warehousing		24 MoReg 2760	25 MoReg 1159	
2 CSR 60-5.050	Grain Inspection and Warehousing		24 MoReg 2760	25 MoReg 1159	
2 CSR 60-5.070	Grain Inspection and Warehousing		24 MoReg 2761	25 MoReg 1159	
2 CSR 60-5.080	Grain Inspection and Warehousing		24 MoReg 2761	25 MoReg 1159	
2 CSR 60-5.100	Grain Inspection and Warehousing		24 MoReg 2762	25 MoReg 1160	
2 CSR 60-5.120	Grain Inspection and Warehousing		24 MoReg 2763	25 MoReg 1160	
2 CSR 80-5.010	State Milk Board		25 MoReg 357		This Issue
2 CSR 90-20.040	Weights and Measures		25 MoReg 760		
2 CSR 90-22.140	Weights and Measures		25 MoReg 760		
2 CSR 90-25.010	Weights and Measures		25 MoReg 761		
DEPARTMENT OF CONSERVATION					
3 CSR 10-1.010	Conservation Commission		25 MoReg 477	25 MoReg 1350	
3 CSR 10-4.110	Conservation Commission		25 MoReg 1385		
3 CSR 10-4.113	Conservation Commission		25 MoReg 1385		
3 CSR 10-4.115	Conservation Commission		25 MoReg 1386		
3 CSR 10-4.116	Conservation Commission		25 MoReg 633	25 MoReg 1475	
			25 MoReg 1393		
3 CSR 10-5.205	Conservation Commission		25 MoReg 1396		
3 CSR 10-5.215	Conservation Commission		25 MoReg 1396		
3 CSR 10-5.535	Conservation Commission		25 MoReg 1397		
3 CSR 10-6.405	Conservation Commission		25 MoReg 1399		
3 CSR 10-6.410	Conservation Commission		25 MoReg 1399		
3 CSR 10-6.415	Conservation Commission		25 MoReg 1400		
3 CSR 10-6.505	Conservation Commission		25 MoReg 1401		
3 CSR 10-6.510	Conservation Commission		25 MoReg 1402		
3 CSR 10-6.525	Conservation Commission		25 MoReg 1402		
3 CSR 10-6.530	Conservation Commission		25 MoReg 1402		
3 CSR 10-6.535	Conservation Commission		25 MoReg 1402		
3 CSR 10-6.545	Conservation Commission		25 MoReg 1403		
3 CSR 10-6.550	Conservation Commission		25 MoReg 1403		
3 CSR 10-6.615	Conservation Commission		25 MoReg 1404		
3 CSR 10-7.410	Conservation Commission		25 MoReg 1404		
3 CSR 10-7.415	Conservation Commission		25 MoReg 1404		
3 CSR 10-7.417	Conservation Commission		25 MoReg 1405		
3 CSR 10-7.420	Conservation Commission		25 MoReg 1405		
3 CSR 10-7.425	Conservation Commission		25 MoReg 1405		

Rule Number	Agency	Emergency	Proposed	Order	In Addition
3 CSR 10-7.430	Conservation Commission		25 MoReg 1405		
3 CSR 10-7.435	Conservation Commission		N.A.	25 MoReg 1475	
3 CSR 10-7.441	Conservation Commission		25 MoReg 1406		
3 CSR 10-7.445	Conservation Commission		25 MoReg 1406		
3 CSR 10-7.450	Conservation Commission		25 MoReg 1406		
3 CSR 10-7.455	Conservation Commission				24 MoReg 2989
			25 MoReg 1407		
3 CSR 10-8.515	Conservation Commission		N.A.	25 MoReg 1478	
3 CSR 10-9.110	Conservation Commission		25 MoReg 1407		
3 CSR 10-9.230	Conservation Commission		25 MoReg 1408		
3 CSR 10-9.420	Conservation Commission		25 MoReg 1408		
3 CSR 10-9.625	Conservation Commission		25 MoReg 1409		
3 CSR 10-9.627	Conservation Commission		25 MoReg 1409		
3 CSR 10-9.640	Conservation Commission		25 MoReg 1410		
3 CSR 10-9.645	Conservation Commission		25 MoReg 1412		
3 CSR 10-10.707	Conservation Commission		25 MoReg 1412		
3 CSR 10-10.782	Conservation Commission		25 MoReg 1412		
3 CSR 10-11.805	Conservation Commission		25 MoReg 1413		

DEPARTMENT OF ECONOMIC DEVELOPMENT

4 CSR 40-1.021	Office of Athletics	21 MoReg 2680			
4 CSR 40-5.070	Office of Athletics	21 MoReg 1963			
4 CSR 65-1.020	Endowed Care Cemeteries	25 MoReg 1197			
4 CSR 65-1.030	Endowed Care Cemeteries	25 MoReg 1197			
4 CSR 65-1.040	Endowed Care Cemeteries	25 MoReg 1197			
4 CSR 65-1.050	Endowed Care Cemeteries	25 MoReg 1202			
4 CSR 65-1.060	Endowed Care Cemeteries	25 MoReg 1205			
4 CSR 65-2.020	Endowed Care Cemeteries	25 MoReg 1205			
4 CSR 65-2.030	Endowed Care Cemeteries	25 MoReg 1208			
4 CSR 65-2.040	Endowed Care Cemeteries	25 MoReg 1212			
4 CSR 70-2.031	State Board of Chiropractic Examiners	25 MoReg 1215			
4 CSR 70-2.050	State Board of Chiropractic Examiners	25 MoReg 925			
4 CSR 70-2.080	State Board of Chiropractic Examiners	25 MoReg 1215			
4 CSR 70-2.090	State Board of Chiropractic Examiners	25 MoReg 1216			
4 CSR 70-2.100	State Board of Chiropractic Examiners	25 MoReg 925			
4 CSR 90-1.010	State Board of Cosmetology	25 MoReg 926			
4 CSR 90-2.010	State Board of Cosmetology	25 MoReg 928			
4 CSR 90-3.010	State Board of Cosmetology	25 MoReg 928			
4 CSR 90-4.020	State Board of Cosmetology	25 MoReg 931R			
		25 MoReg 931			
4 CSR 90-11.010	State Board of Cosmetology	25 MoReg 931			
4 CSR 90-13.010	State Board of Cosmetology	25 MoReg 932			
4 CSR 100	Division of Credit Unions				25 MoReg 724
					25 MoReg 724
					25 MoReg 724
					25 MoReg 1032
					25 MoReg 1161
					25 MoReg 1161
					25 MoReg 1161
					This Issue
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4 CSR 100-2.045	Division of Credit Unions	25 MoReg 932			
4 CSR 100-2.190	Division of Credit Unions	25 MoReg 261	25 MoReg 1350		
4 CSR 105-3.040	Credit Union Commission	25 MoReg 360			
4 CSR 110-2.001	Missouri Dental Board	25 MoReg 477			
4 CSR 110-2.090	Missouri Dental Board	25 MoReg 1216			
4 CSR 110-2.130	Missouri Dental Board	25 MoReg 478R			
		25 MoReg 478			
4 CSR 115-1.010	State Committee of Dietitians	25 MoReg 934			
4 CSR 115-1.020	State Committee of Dietitians	25 MoReg 937			
4 CSR 115-1.030	State Committee of Dietitians	25 MoReg 940			
4 CSR 115-1.040	State Committee of Dietitians	25 MoReg 943			
4 CSR 115-2.010	State Committee of Dietitians	25 MoReg 943			
4 CSR 115-2.020	State Committee of Dietitians	25 MoReg 947			
4 CSR 115-2.030	State Committee of Dietitians	25 MoReg 948			
4 CSR 115-2.040	State Committee of Dietitians	25 MoReg 951			
4 CSR 115-2.050	State Committee of Dietitians	25 MoReg 955			
4 CSR 120-1.030	Board of Embalmers and Funeral Directors	25 MoReg 959			
4 CSR 120-2.010	Board of Embalmers and Funeral Directors	25 MoReg 959			
4 CSR 120-2.060	Board of Embalmers and Funeral Directors	25 MoReg 960			
4 CSR 120-2.100	Board of Embalmers and Funeral Directors	25 MoReg 261	25 MoReg 1350		
4 CSR 150-2.001	State Board of Registration for the Healing Arts	25 MoReg 485			
4 CSR 150-2.005	State Board of Registration for the Healing Arts	25 MoReg 485			
4 CSR 150-2.065	State Board of Registration for the Healing Arts	25 MoReg 485			
4 CSR 150-2.080	State Board of Registration for the Healing Arts	25 MoReg 261	25 MoReg 1350		
4 CSR 150-2.100	State Board of Registration for the Healing Arts	25 MoReg 486			
4 CSR 150-3.080	State Board of Registration for the Healing Arts	25 MoReg 1217			
4 CSR 150-3.170	State Board of Registration for the Healing Arts	25 MoReg 1217			
4 CSR 150-3.203	State Board of Registration for the Healing Arts	25 MoReg 486			
4 CSR 150-4.051	State Board of Registration for the Healing Arts	25 MoReg 487			
4 CSR 150-4.055	State Board of Registration for the Healing Arts	25 MoReg 487			
4 CSR 150-4.060	State Board of Registration for the Healing Arts	25 MoReg 488			

Rule Number	Agency	Emergency	Proposed	Order	In Addition
4 CSR 150-4.105	State Board of Registration for the Healing Arts	25	MoReg 488		
4 CSR 150-4.110	State Board of Registration for the Healing Arts	25	MoReg 489R		
		25	MoReg 489		
4 CSR 150-4.115	State Board of Registration for the Healing Arts	25	MoReg 490R		
		25	MoReg 490		
4 CSR 150-4.120	State Board of Registration for the Healing Arts	25	MoReg 491R		
		25	MoReg 491		
4 CSR 150-4.125	State Board of Registration for the Healing Arts	25	MoReg 496		
4 CSR 150-4.130	State Board of Registration for the Healing Arts	25	MoReg 496		
4 CSR 150-4.200	State Board of Registration for the Healing Arts	25	MoReg 496		
4 CSR 150-4.201	State Board of Registration for the Healing Arts	25	MoReg 497		
4 CSR 150-4.203	State Board of Registration for the Healing Arts	25	MoReg 497		
4 CSR 150-4.205	State Board of Registration for the Healing Arts	25	MoReg 498		
4 CSR 150-4.210	State Board of Registration for the Healing Arts	25	MoReg 503		
4 CSR 150-4.215	State Board of Registration for the Healing Arts	25	MoReg 503		
4 CSR 150-6.020	State Board of Registration for the Healing Arts	25	MoReg 507		
4 CSR 150-6.025	State Board of Registration for the Healing Arts	25	MoReg 507		
4 CSR 150-6.030	State Board of Registration for the Healing Arts	25	MoReg 512		
4 CSR 150-6.060	State Board of Registration for the Healing Arts	25	MoReg 512		
4 CSR 150-6.070	State Board of Registration for the Healing Arts	25	MoReg 517		
4 CSR 150-7.100	State Board of Registration for the Healing Arts	25	MoReg 517		
4 CSR 150-7.120	State Board of Registration for the Healing Arts	25	MoReg 517		
4 CSR 150-7.122	State Board of Registration for the Healing Arts	25	MoReg 518		
4 CSR 150-7.125	State Board of Registration for the Healing Arts	25	MoReg 518		
4 CSR 150-7.140	State Board of Registration for the Healing Arts	25	MoReg 519		
4 CSR 150-7.200	State Board of Registration for the Healing Arts	25	MoReg 521		
4 CSR 150-7.300	State Board of Registration for the Healing Arts	25	MoReg 521		
4 CSR 150-7.310	State Board of Registration for the Healing Arts	25	MoReg 527		
4 CSR 155-1.010	Office of Health Care Providers	25	MoReg 531	This Issue
4 CSR 155-1.020	Office of Health Care Providers	25	MoReg 531	This Issue
4 CSR 193-1.010	Interior Design Council	25	MoReg 761		
4 CSR 193-1.020	Interior Design Council	25	MoReg 761		
4 CSR 193-1.030	Interior Design Council	25	MoReg 765		
4 CSR 193-2.010	Interior Design Council	25	MoReg 769		
4 CSR 193-2.020	Interior Design Council	25	MoReg 773		
4 CSR 193-2.030	Interior Design Council	25	MoReg 773		
4 CSR 193-2.040	Interior Design Council	25	MoReg 773		
4 CSR 193-3.010	Interior Design Council	25	MoReg 778		
4 CSR 193-3.020	Interior Design Council	25	MoReg 778		
4 CSR 193-4.010	Interior Design Council	25	MoReg 782		
4 CSR 193-5.010	Interior Design Council	25	MoReg 782		
4 CSR 193-6.010	Interior Design Council	25	MoReg 786		
4 CSR 193-6.020	Interior Design Council	25	MoReg 789		
4 CSR 193-6.030	Interior Design Council	25	MoReg 792		
4 CSR 195-5.010	Workforce Development	24	MoReg 2314		
		25	MoReg 962		
4 CSR 195-5.020	Workforce Development	24	MoReg 2315		
		25	MoReg 962		
4 CSR 195-5.030	Workforce Development	24	MoReg 2318		
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